IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. JAMAL DEAN and LEVON DEAN, Defendants.	No. CR 12-4082-MWB **COURT'S PROPOSED INSTRUCTIONS TO THE JURY** (08/18/14 "ANNOTATED" VERSION)

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No. 1 — INTRODUCTION[1]

Congratulations on your selection as a juror! These Instructions are to help you better understand the trial and your role in it.

In an Indictment, a Grand Jury has charged defendants Jamal Dean and Levon Dean with several offenses arising from or related to their alleged robberies of two drug traffickers in April 2013 in Sioux City, Iowa, and elsewhere.[2] An Indictment is simply an accusation—it is not evidence of anything. Each defendant has pled not guilty to the crimes charged against him, and he is presumed absolutely not guilty of each offense charged, unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

You must decide during your deliberations whether or not the prosecution has proved each defendant's guilt on each offense charged against him beyond a reasonable doubt. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

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[1] *Compare* 8th Cir. Criminal Model 1.01.

[2] I do not find it necessary to reiterate more specifically the four offenses with which the defendant is charged. *Compare* Prosecution's Proposed Jury instructions No. 1, unnumbered § 2. Rather, the charged offenses will be addressed with particularity in the "elements" instructions.

Remember, only defendants Jamal Dean and Levon Dean, and not anyone else, are on trial. Also, each defendant is on trial *only* for the offenses charged against him in the Indictment, and not for anything else.

Remember that each count charges a separate crime. Also, each defendant is entitled to have the charges against him considered separately, based solely on the evidence that applies to him. *Therefore, you must give separate consideration to each charge against each defendant and return a separate, unanimous verdict on each charge against each defendant.*[3]

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

[3] This paragraph addresses one issue, separate consideration of charges against each defendant, raised in Defendant Levon Dean's Supplemental Proposed Jury Instruction (docket no. 228), and the concern about separate consideration of charges against each defendant raised in Defendant Jamal Dean's Objections To [Prosecution's] Proposed Jury Instructions And Supplemental Proposed Instructions (docket no. 237). *Compare* 8th Cir. Criminal Model 2.14 (2014). The other issue raised in Defendant Levon Dean's Supplemental Proposed Jury Instruction, evidence admissible against only one defendant, will be addressed in Instruction No. 13 on "evidence."

No. 2 — PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF[4]

The presumption of innocence means that each defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from each defendant's arrest, the charges, or the fact that he is here in court
- This presumption remains with each defendant throughout the trial
- This presumption is enough, alone, for you to find each defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of a particular offense charged against him

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to a defendant to prove his innocence
- This burden means that a defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify
- This burden means that, if a defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict

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[4] *Compare* 8th Cir. Criminal Model 3.05; Prosecution's Proposed Jury Instruction No. 2.

- This burden means that you must find a defendant not guilty of a particular offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense

No. 3 — REASONABLE DOUBT[5]

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or a defendant, keeping in mind that a defendant never, ever has the burden or duty to call any witnesses or to produce any evidence
- A reasonable doubt may arise from the prosecution's lack of evidence

The prosecution must prove each defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all of the evidence in the case before making a decision
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs

The prosecution's burden is heavy, but it does not require proof beyond all doubt.

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[5] *Compare* 8th Cir. Criminal Model 3.11; Prosecution's Proposed Jury Instruction No. 3.

No. 4 — OTHER IMPORTANT TERMS

Before I turn to specific instructions on the offenses charged in this case, I will explain some important terms.

Elements

Each offense charged consists of "elements," which are the parts of the offense. The prosecution must prove beyond a reasonable doubt all of the elements of a particular offense against a defendant for you to find that defendant guilty of that offense.

Timing

The Indictment alleges an approximate period of time or an approximate date for each charged offense. The prosecution does not have to prove that a particular offense occurred on an exact date, only that the offense occurred at a time that was reasonably within the time period or reasonably close to the date alleged for that offense in the Indictment.

Location

You must decide whether each defendant's conduct occurred in the Northern District of Iowa. Sioux City and Woodbury County are in the Northern District of Iowa.

Possession[6]

A person possessed something if all three[7] of the following are true:

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[6] 9th Cir. Criminal Model 3.18 (modified and recast in past tense). Because "possession" is relevant to several of the charged offenses, I reject Jamal Dean's request to instruct on "possession" only for counts to which the concept of "possession" is relevant, as doing so would be repetitive.

[7] Defendant Jamal Dean specifically objected to the prosecution's request for addition of "or transported" after "concealed," in the second prong or element of "possession," because he argues that "intent" as well as "knowledge" and "control" are required. He cites various decisions of the Eighth Circuit Court of Appeals that he argues make clear that "intent" is a requirement of "constructive possession." This objection has required a more extensive rethinking of my stock "possession" instruction than just whether or not "transport" can properly be added after "concealed." I note that an express reference to an "intent to control" requirement for "constructive possession" is often missing from Eighth Circuit formulations. *See, e.g., United States v. Kalb*, 750 F.3d 1001, 1005 (8th Cir. 2014) ("The government may show that Kalb knowingly possessed contraband by showing constructive possession, which is "ownership, dominion, or control over the contraband itself," or over the vehicle in which the contraband is concealed."); *United States v. Wright*, 739 F.3d 1160, 1168 (8th Cir. 2014) ("Constructive possession is defined as knowledge of presence of the contraband plus control over the contraband. Evidence showing a person has dominion over the premises in which the contraband is concealed establishes constructive possession." (internal quotation marks and citations omitted)). Nevertheless, defendant Jamal Dean is correct that there are other cases standing for the proposition that "intent to control the item" is a requirement of "constructive possession." *See, e.g., United States v. Chantharath*, 705 F.3d 295, 304 (8th Cir. 2013) ("Constructive possession of a firearm is established when a person has dominion over the premises where the firearm is located, or control, ownership, or dominion over the firearm itself.... [C]onstructive possession generally requires knowledge of an object, the ability to control it, and the intent to do so." (internal quotation marks and citations omitted)); *United States v. Parker*, 587 F.3d 871, 881 (8th Cir. 2009) ("For constructive possession, a defendant must have knowledge of an object, the ability to control it, and the intent to do so." (citation and internal quotation marks omitted)). Interestingly, there are also cases that expressly refer only to "control" and "intent" requirements, without expressly referring to "knowledge." *See, e.g., United States v. Thompson*, 690 F.3d 977, 994 (8th Cir. 2012) (finding sufficient evidence of constructive possession, based on a definition of constructive possession "as

- the person knew about it, and
- the person had
  - physical control over it or a vehicle in which it was concealed[8] or transported[9], or
  - the power, or ability,[10] to control it, and
- the person had the intention to control it

More than one person may have possessed something at the same time.

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occurring when '[a] person who, although not in actual possession, has both the power and the intention at a given time to exercise control over a thing, either directly or through another person or persons'" (quoting *United States v. Ali*, 63 F.3d 710, 715 (8th Cir. 1995)). It may be reasonable to infer "intent to control an item" from evidence of "knowledge of the item" and "control of the item," and it may be reasonable to infer "knowledge of the item" from "control of the item" and "intent to control the item." Nevertheless, I believe that any potential error can be avoided by setting out all *three* of the "generally required" elements. *See, e.g., Chantharath*, 705 F.3d at 304.

[8] *Ortega v. United States*, 270 F.3d 540, 545 (8th Cir. 2001).

[9] The prosecution has requested the addition of "or transported." *See* Prosecution's Proposed Jury Instruction No. 4. I find that such an addition is appropriate. *Cf. United States v. Smith*, 481 F.3d 259, 263 (5th Cir. 2007) ("[I]n the context of an automobile constructive possession will support a conviction under the 'carrying' prong of § 924(c)(1) when a firearm is transported in a vehicle and the operator of the vehicle knowingly possesses the firearm in the vehicle during and in relation to a drug trafficking crime.").

[10] *See United States v. Zoch*, No. CR 11-4031-MWB (N.D. Iowa Nov. 16, 2011) (adding "ability" after "power" to answer a jury question).

"Commerce" And "Interference With Commerce"

"Commerce" means[11]

- all economic activity, consisting of the exchange or the buying and selling of goods, merchandise, property, or commodities, involving transportation of those goods, merchandise, property, or commodities, between any point in one State and any point outside of that State; and
- all such economic activity between points within the same State through any place outside of that State

[11] Because "commerce" and "interference with commerce" are relevant to several charges, I have included the definitions here. I have relied on what appear to be the pertinent parts of the definition of "commerce" in § 1951(b)(3) ("The term 'commerce' means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction."). *Compare* Prosecution's Proposed Jury Instruction No. 7 (explanation to element *four*); Defendant Levon Dean's Proposed Jury Instruction No. 2 (explanation to element *four*). Nevertheless, defining "commerce" as "commerce," or even as "interstate commerce," as the defendants suggest, is a tautology and completely unhelpful to jurors. The statute refers only to "commerce," not "interstate commerce," and the definition of "commerce" in § 1951(b)(3) clearly involves "interstate" commerce. I do not find it necessary to reiterate "interstate" at every turn. I have relied on the Notes and Comments to 8th Cir. Criminal Model 6.18.1951, which point out that "Congress intended to exercise the full scope of its power under the Interstate Commerce Clause of the United States Constitution" and gives various examples of commerce and interference with commerce, the conclusion of the Tenth Circuit Court of Appeals that "the Hobbs Act regulates economic activity," *see United States v. Malone*, 222 F.3d 1286, 1295 (10th Cir.), *cert. denied*, 531 U.S. 1028 (2000), and the dictionary definition of "commerce," sensibly paraphrased, for what I hope is a more informative definition of "commerce" for purposes of § 1951 offenses.

A defendant's actions "interfered with commerce"[12] if that defendant's actions obstructed, delayed, or affected commerce in some way or degree.

- "Obstructed, delayed, or affected commerce" means interfered with, changed, or altered the movement or transportation or flow of goods, merchandise, money, or property in commerce[13]
- The effect can be minimal[14]
- Such effect can be proved by one or more of the following:
    - depletion of the assets of a business operating in commerce[15]
    - the temporary closing of a business to recover from a robbery[16]
    - loss of sales of an out-of-state commercial product[17]
    - slowdown of business as a result of a robbery[18]
- The robbery or attempted robbery of an individual drug trafficker can have the necessary minimal effect on commerce, as long as the illegal

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[12] Taking my cue from the title to § 1951, I believe that "interference" is the appropriate umbrella term for "obstruct, delay, and affect," the language of the statute itself.

[13] *See* 18 U.S.C. § 1951(b)(3); Prosecution's Proposed Jury Instruction No. 7 (defining the required effect on commerce by paraphrasing the statute); Defendant Levon Dean's Proposed Jury Instruction Nos. 2 and 3.

[14] 8th Cir. Criminal Model 6.18.1951, Committee Comments.

[15] *See United States v. Mann*, 701 F.3d 274, 295 (8th Cir. 2012).

[16] *See Mann*, 701 F.3d at 295.

[17] *Id.*

[18] *Id.*

drug business dealt in goods, even illegal goods, that moved through "commerce," as defined above[19]

Verdict Form

A Verdict Form is attached to these Instructions.

- A Verdict Form is simply a written notice of your decision
- When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question
- You will all sign that copy to indicate that you agree with the verdict and that it is unanimous
- Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict

* * *

I will now give you the "elements" instructions on the charged offenses. The "elements" themselves are set out in **bold**.

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[19] *See United States v. McCraney*, 612 F.3d 1057, 1064 (8th Cir. 2010) (stating, "Congress may well have been motivated to enact the Hobbs Act by 'offenses with a broad impact on interstate commerce,' but the text of the statute does not exclude local robberies that satisfy the requirement of an effect on interstate commerce," and holding that "robbery of an individual drug trafficker," if it showed disruption of the movement of a commodity in interstate commerce, would violate § 1951); *McAdory*, 501 F.3d at 871 ("'[R]obberies from small commercial establishments qualify as Hobbs Act violations so long as the commercial establishments deal in goods that move through interstate commerce.' [*United States v. Dobbs*, 449 F.3d 904, 912 (8th Cir. 2006)] (affirming a Hobbs Act conviction for the robbery of a stand-alone, mom-and-pop convenience store).").

No. 5 — COUNT 1: CONSPIRACY TO COMMIT ROBBERIES INTERFERING WITH COMMERCE[20]

Count 1 of the Indictment charges the defendants with "conspiracy to commit robberies interfering with commerce." The defendants deny that they committed this offense.

Elements

For you to find a defendant guilty of this offense, the prosecution must prove beyond a reasonable doubt *all* of the following elements against that defendant:

***One*, at some time during the period of the conspiracy—that is, from a date unknown until about April 29, 2013—in the Northern District of Iowa, two or more persons reached an agreement or understanding to commit robberies of drug traffickers.**[21]

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[20] I note that both defendants prefer to identify this offense as "conspiracy to interfere with commerce by robbery." While the federal *jurisdictional* element is the "commerce" element, the *criminal* aspect of the offense is the "robbery" element. Furthermore, a defendant does not have to be aware of or intend the effect on commerce that establishes federal jurisdiction. I have also rejected "interstate commerce" as an unhelpful term and recognized that "interference" is the correct umbrella term for the effect on "commerce" under the statute. Thus, my shorthand description of the offense is "conspiracy to commit robberies interfering with commerce," rather than "conspiracy to interfere with interstate commerce by robbery."

[21] *Compare* Prosecution's Proposed Jury Instruction No. 5; Defendant Levon Dean's Proposed Jury Instruction No. 1 (Count 1). The prosecution's statement of this element refers to "a robbery," Levon Dean's statement of it refers to taking property, etc., "from J.R.," and Jamal Dean asserts that the element must refer to a series of robberies. The Third Superseding Indictment, Count 1, alleges that the objective of the conspiracy was "robbery . . . and attempted robbery, in that JAMAL DEAN, LEVON DEAN, SARAH BERG, and others known and unknown to the grand jury, did [conspire

to] unlawfully take and obtain, and attempted [sic] to take and obtain, methamphetamine, United States currency, and other property from J.R., C.B., and others known and unknown to the grand jury (who were then drug traffickers whose drug trade affected commerce). . . ." Thus, I believe that the correct formulation of the "objective" of the conspiracy is "robberies of drug traffickers."

That does not mean, as Jamal Dean contends, that a defendant must be found not guilty if the prosecution ultimately proves only an agreement to commit one robbery of one drug trafficker. "Where, as in this case, the government alleges a conspiracy to commit multiple crimes, 'the charge is sustained by adequate pleadings and proof of conspiracy to commit any one of the offenses.'" *United States v. McKanry*, 628 F.3d 1010, 1016 (8th Cir. 2011) (quoting *United States v. Wedelstedt*, 589 F.2d 339, 342 (8th Cir. 1978), in turn quoting *United States v. James*, 528 F.2d 999, 1014 (5th Cir. 1976)); *see also United States v. Delgado*, 653 F.3d 729, 735-36 (8th Cir. 2011) (rejecting a defendant's contention that the trial evidence showed several separate conspiracies, because the evidence showed a single conspiracy with common purposes or objectives under one general agreement, even if the evidence showed a number of separate transactions and a number of groups involved in separate crimes or acts).

Jamal Dean also argues that the objective must be "interference with interstate commerce by robberies," to correspond to the description of the crime in the statute and to suggest the federal nexus for this crime. Again, because a defendant does not have to be aware of or intend the effect on commerce that establishes federal jurisdiction, *see, infra,* note 23, it is improper to include the federal jurisdictional element as part of the required agreement to commit such robberies. I also believe that reference to the elements of the crimes that the defendants purportedly agreed to commit makes clear that the crimes must have the required effect on commerce as a natural and probable result, if those crimes are completed.

The prosecution apparently asserts that "attempt" to rob drug traffickers was an alternative objective of the conspiracy, but Jamal Dean objects, because "[p]eople conspire to succeed, not to attempt." As a matter of common sense, there is little likelihood of a more than theoretical distinction—or any comprehensible distinction—between conspiring to *rob drug traffickers* and conspiring *to attempt to rob drug traffickers*. In either case, the ultimate objective is *to rob drug traffickers*. Indeed, § 1951 demonstrates that the substantive offense is "[interfering with] commerce . . . by robbery," and it then also expressly criminalizes "attempt[ing] or conspir[ing] so to do"—*i.e.*, it demonstrates that the substantive "robbery" is the *objective* of the "attempt" and "conspiracy" alternatives. Thus, *I will leave for the substantive "robbery interfering with*

A conspiracy is an agreement of two or more persons to commit one or more crimes. For this element to be proved,

- The defendant may have been, but did not have to be, one of the original conspirators
- The crime or crimes that the conspirators agreed to commit did not actually have to be committed
- The agreement did not have to be written or formal
- The agreement did not have to involve every detail of the conspiracy[22]

Here, the conspirators allegedly agreed to commit "robberies interfering with commerce"—that is, robberies of drug traffickers. To help you decide whether or not the conspirators agreed to commit such crimes, you should consider the elements of "a robbery interfering with commerce," as set out in Instruction No. 6.

Remember,

- the conspirators did not have to consider, know, or intend that the robberies would affect commerce, but an effect on commerce must have been the natural and probable

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commerce" offenses any discussion of an "attempt" alternative, because reference to "attempt" here is superfluous and unhelpful, if not downright confusing.

[22] 9th Cir. Criminal Model 8.16, ¶¶ 6-7.

effect of the robberies that the conspirators agreed to commit[23]

[23] It seems to me that a critical question for a § 1951 offense or conspiracy to commit such an offense is whether the defendant must know of and intend *the effect on interstate commerce*, or only intend the *robbery*. On its face, the statute does not require that the person committing the robbery have any knowledge of the effect of the robbery on interstate commerce. Similarly, the Third Circuit Court of Appeals has held that "[c]onviction under the Hobbs Act does not require proof that the defendant intended to affect interstate commerce," and other courts agree. *United States v. Powell*, 693 F.3d 398, 405 (3d Cir. 2012); *accord, e.g., United States v. Rivera-Rivera*, 555 F.3d 277, 290 (1st Cir. 2009) (under § 1951, "the government is not required to prove that the defendants intended to affect commerce"); *United States v. Jimenez-Torres*, 435 F.3d 3, 10 (1st Cir. 2006) ("Jiménez may not have intended to cause these effects [on commerce] but his intent is irrelevant to establishing the commerce element of a Hobbs Act offense."); *United States v. Williams*, 342 F.3d 350, 354 (4th Cir. 2003) (noting that § 1951 requires only a "minimal" effect on commerce and concluding "[t]he Hobbs Act also does not require proof that a defendant intended to affect commerce or that the effect on commerce was certain; it is enough that such an effect was the natural, probable consequence of the defendant's actions."); *United States v. Addonizio*, 451 F.2d 49, 77 (3d Cir. 1971) ("It is not necessary that the *purpose* of the extortion be to affect interstate commerce, but only that one of the *natural effects* thereof be an obstruction of that commerce." (emphasis in the original; internal citations omitted)). Indeed, the Eighth Circuit Court of Appeals so held more than half a century ago. *Nick v. United States*, 122 F.2d 660, 673 (8th Cir. 1941) ("The first of these [allegations of error] (assignment 29(h)) is aimed at the statement in the charge that it is not necessary for the jury to find that the defendants, in conspiring, considered that the effect of their conspiracy would be to affect interstate commerce or that one of the purposes of the conspiracy was to affect such commerce. Obviously, this statement by the court is correct. All that is necessary is that the conspiracy shall be to do something, the natural effect of which will be to affect interstate commerce."). Thus, the knowledge and intent required are knowing and intentional commission of (or agreement to commit) *robberies*, not knowledge or intent or agreement that the robberies would affect commerce.

- the prosecution does not have to prove that the robberies actually occurred[24] or that the defendant actually committed them[25] for this element to be proved

A single conspiracy

- is composed of individuals sharing common purposes or objectives under one general agreement[26]
- can be made up of a number of separate acts and a number of groups involved in separate crimes or acts[27]

Where, as here, the indictment charges a conspiracy to commit multiple crimes, the required agreement existed, if the prosecution proves prove beyond a reasonable doubt that there was an agreement to commit any one or more of those crimes.[28] You must unanimously agree which one or more crimes the conspirators agreed to commit.

If there was no agreement, there was no conspiracy.

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[24] *See* 8th Cir. Model 5.06E (Conspiracy: Success Immaterial). I think that, by using "robberies actually occurred," I have distinguished the completed robberies from "overt acts" that are steps or elements of the robberies.

[25] *Cf., e.g., United States v. Jarrett*, 684 F.3d 800, 802 (8th Cir. 2012) (holding that a defendant did not have to commit a money-laundering offense to be found guilty as a co-conspirator).

[26] *Delgado*, 653 F.3d at 735.

[27] *Id.* at 736.

[28] *McKanry*, 628 F.3d at 1016.

***Two*, the defendant voluntarily and intentionally joined in the agreement or understanding.**

> If you find that there was an agreement, but you find that a particular defendant did not join in that agreement, then you cannot find that defendant guilty of this "conspiracy" charge. A defendant must have joined in the agreement at any time during its existence. A defendant may have joined the agreement even if he agreed to play only a minor part in it.[29]
>
> A defendant did not have to do any of the following to join the agreement:
>
> - join the agreement at the same time as all of the other conspirators
> - know all of the details of the conspiracy, such as the names, identities, or locations of all of the other members, or
> - conspire with every other member of the conspiracy[30]
>
> On the other hand, each of the following, alone, is not enough to show that a person joined the agreement:
>
> - evidence that a person was merely present at the scene of an event
> - evidence that a person merely acted in the same way as others

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[29] 8th Cir. Criminal Model 5.06A-2B, (explanation to element *one*, last ¶, which now uses "minor part" rather than "minor role").

[30] 8th Cir. Criminal Model 5.06A-2B, (explanation to element *one*, last ¶, explaining that knowledge of all other conspirators is not required).

- evidence that a person merely associated with others
- evidence that a person was friends with or met socially with individuals involved in the conspiracy
- evidence that a person who had no knowledge of a conspiracy acted in a way that advanced an objective of the conspiracy
- evidence that a person merely knew of the existence of a conspiracy
- evidence that a person merely knew that an objective of the conspiracy was being considered or attempted, or
- evidence that a person merely approved of the objectives of the conspiracy

Rather, the prosecution must prove that the person had some degree of knowing involvement in the conspiracy.[31]

***Three*, at the time that the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.**

Without knowledge of the purpose of the conspiracy, a defendant cannot be guilty of the "conspiracy" offense, even if his acts furthered the conspiracy. The prosecution does not have to prove that the defendant knew that what he did was unlawful.[32]

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[31] My stock "mere presence," etc., instruction, modified in light of 8th Cir. Criminal Model 5.06A-2 (explanation to element *two*), and "approval" of similar language similar in *United States v. Croft*, 124 F.3d 1109, 1123 (9th Cir. 1997).

[32] *Compare* 8th Cir. Criminal Model 5.06A-2 (explanation to element *three*, last paragraph).

***Four*, while the agreement or understanding was in effect, a person or persons who had joined in the agreement knowingly did one or more "overt acts" for the purpose of carrying out or carrying forward the agreement or understanding.**[33]

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[33] The prosecution asserts that it is now clear that 18 U.S.C. § 1951 does not require that any "overt act" be alleged in the indictment or proved to a jury beyond a reasonable doubt, notwithstanding that the prosecution alleged numerous "overt acts" in the Third Superseding Indictment. The prosecution asserts that the Eighth Circuit Court of Appeals did not identify any such element in *United States v. McAdory*, 501 F.3d 868, 871 (8th Cir. 2007) (Hobbs Act conspiracy case), and that neither the plain language of the controlling statute nor settled interpretive principles require an "overt act" element of a § 1951 conspiracy, citing *Whitfield v. United States*, 543 F.3d 209, 219 (2005) (conspiracy to commit money laundering); *United States v. Shabani*, 513 U.S. 10, 13 (1994) (drug conspiracy). Defendant Jamal Dean states, in a footnote in what is otherwise his objections to the Prosecution's Proposed Jury Instructions, that he agrees with the prosecution that no "overt act" element is required to prove this conspiracy. On the other hand, defendant Levon Dean has requested an instruction including an "overt acts" element.

I do not believe that *McAdory* settles the question, even though it is a Hobbs Act case, because it simply lists the elements of "a conspiracy" without an overt act element, but in doing so, relies on a drug conspiracy case, *United States v. Hakim*, 491 F.3d 843, 845-46 (8th Cir. 2007), and engages in no analysis of whether or not a Hobbs Act conspiracy charge does or does not require proof of an overt act. Moreover, as the Third Circuit Court of Appeals recognized as recently as May 1, 2014, albeit in an unpublished decision, there remains a split in the circuits about whether or not an overt act is required. *See United States v. Singleton*, ___ F'Appx. ___, ___ n.2, 2014 WL 1706266, 1* n.2 (3d Cir. May 1, 2014) (citing cases demonstrating the split). I will include an "overt acts" element, in an abundance of caution, for the following reasons: (1) neither the Supreme Court nor the Eighth Circuit Court of Appeals has plainly resolved the issue; (2) instructing on an "overt act" element will avoid a retrial, if a controlling court determines on appeal in this case that such an element is required; and (3) the plethora of overt acts that the prosecution has alleged in the Third Superseding Indictment suggests that the prosecution believes that it is ready and able to be put to its proof of one or more of them and that it will not be prejudiced if required to do so. ***I will delete the "overt***

An "overt act"[34]

- is an act done in furtherance of the conspiracy—that is, an act that advances or helps the conspiracy forward[35]
- does not have to be unlawful in and of itself
- may be perfectly innocent in and of itself
- may be committed by any co-conspirator

The defendant

- does not have to commit the "overt act"
- know about the "overt act," or
- witness the "overt act"

The Indictment charges that the following "overt acts" were committed in furtherance of the conspiracy:

- Sometime before April 15, 2013, Jamal Dean and Levon Dean acquired a semiautomatic Mossberg .22 caliber rifle and ammunition
- Sometime before April 15, 2013, Jamal Dean, Levon Dean, and others[36] discussed robbing individual drug traffickers

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act" requirement only if all parties agree that it is not required and that the absence of such an element will not be asserted as an error on appeal.

[34] Except where otherwise indicated, the definition of "overt act" is drawn from 8th Cir. Model 5.06A-2 (2014) (explanation to element four).

[35] *Cf.* 8th Cir. Model 6.18.924 (defining "in furtherance" for a § 924 "possession of a firearm in furtherance of a crime of violence" offense).

[36] I substituted "others" for "others known and unknown to the grand jury," as stated in the Third Superseding Indictment and Defendant Levon Dean's Proposed Jury

- Sometime before April 15, 2013, Jamal Dean, Levon Dean, and others began identifying individual drug traffickers that could be robbed

- On or about April 15, 2013, Jamal Dean, Levon Dean, and others traveled from a house within South Sioux City, Nebraska, with the semiautomatic Mossberg .22 caliber rifle, to J.R.'s motel room at the Palmer House Motel in Sioux City, Iowa

- On or about April 15, 2013, Jamal Dean, Levon Dean, and others entered J.R.'s Palmer House Motel room in Sioux City, Iowa, with the semiautomatic Mossberg .22 caliber rifle

- On or about April 15, 2013, Jamal Dean, Levon Dean, and others demanded drugs and cash from J.R.

- On or about April 15, 2013, Jamal Dean struck J.R. with the semiautomatic Mossberg .22 caliber rifle

- On or about April 15, 2013, Jamal Dean threatened to shoot J.R. with the semiautomatic Mossberg .22 caliber rifle if J.R. did not surrender his methampheta-

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Instruction No. 1, because "others known and unknown to the grand jury" does nothing to narrow or explain the identity of the "others," at least to jurors.

mine, cash,[37] mobile phone, motor vehicle, and other property

- On or about April 15, 2013, Jamal Dean, Levon Dean, and others took and obtained, and attempted to take and obtain, methamphetamine, cash, a mobile phone, a motor vehicle, and other property from J.R.

- On or about April 15, 2013, Jamal Dean, Levon Dean, and others returned to South Sioux City, Nebraska, in J.R.'s motor vehicle, after the robbery of J.R.

- On or about April 24, 2013, Jamal Dean, Levon Dean, and others traveled from a residence within South Sioux City, Nebraska, with the semiautomatic Mossberg .22 caliber rifle, to C.B.'s residence in Sioux City, Iowa

- On or about April 24, 2013, Jamal Dean, Levon Dean, and others entered C.B.'s residence in Sioux City, Iowa, with the semiautomatic Mossberg .22 caliber rifle

- On or about April 24, 2013, Jamal Dean, Levon Dean, and others demanded that C.B. turn out and empty his pockets

- On or about April 24, 2013, Levon Dean gestured to Jamal Dean, who was carrying the semiautomatic Mossberg .22 caliber rifle, and indicated to C.B. that they were

[37] The Indictment and the parties' Proposed Jury Instructions use "United States currency," but I see no reason why the more "juror friendly" term "cash" cannot be used instead in this case.

seriously threatening C.B. and not playing around

- On or about April 24, 2013, Jamal Dean struck C.B. with the semiautomatic Mossberg .22 caliber rifle

- On or about April 24, 2013, Jamal Dean, Levon Dean, and others took and obtained, and attempted to take and obtain, methamphetamine, cash, and other property from C.B.

- On or about April 24, 2013, Jamal Dean, Levon Dean, and others returned to South Sioux City, Nebraska, in C.B.'s motor vehicle, after the robbery of C.B.

The prosecution does not have to prove, beyond a reasonable doubt, that more than one "overt act" was done in furtherance of the conspiracy or that a particular "overt act" was committed by all of the persons alleged. It is enough if the prosecution proves beyond a reasonable doubt one such act by one or more of the persons alleged. However, you must unanimously agree on which one or more "overt acts" were committed in furtherance of the conspiracy.

If the prosecution *does not* prove all of these elements beyond a reasonable doubt as to a particular defendant, then you must find that defendant not guilty of the offense of "conspiracy to commit a robbery interfering with commerce," as charged in **Count 1** of the Indictment.

Co-conspirator liability

If you find

- that the conspiracy existed, ***and***
- that a particular defendant was part of the conspiracy

then[38] you may consider acts knowingly done and statements knowingly made by that defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to that defendant.

An act or statement "in furtherance of the conspiracy"

- is an act or statement that furthered, advanced, or helped the conspiracy forward[39]
- includes acts done and statements made in the absence of and without the knowledge of a particular defendant
- includes acts done and statements made before a particular defendant joined the conspiracy

On the other hand, acts and statements were *not* "in furtherance of the conspiracy," if the acts and statements were made

- before the conspiracy began
- after the conspiracy ended

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[38] I believe that I have adequately explained the requirement that the jurors find the conspiracy existed before they can impose co-conspirator liability by italicizing "if" and "then" and setting out the prerequisites as separate bullet points.

[39] This definition is drawn from the definition of "overt act" in 8th Cir. Model 5.06A-2 (2014) (explanation to element four).

Acts and statements that were *not* made during and in furtherance of the conspiracy are admissible only against the person who did them or made them.[40]

[40] *See* 8th Cir. Model 5.06D (Conspiracy: Co-Conspirator Acts And Statements); *compare* Prosecution's Proposed Jury Instruction No. 5 (last paragraph); Defendant Levon Dean's Proposed Jury Instruction No. 1 (last paragraph).

No. 6 — "PERSONAL COMMISSION" AND "AIDING AND ABETTING" ALTERNATIVES[41]

The Indictment charges the defendants with "personally committing" and "aiding and abetting" each of the remaining offense.[42]

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[41] *See* Prosecution's Proposed Jury Instruction No. 6. As the prosecution asserts, each of the substantive offenses charged in the Third Superseding Indictment charges both "personal commission" and "aiding and abetting" the offense. Defendant Jamal Dean objects to such an instruction, because it unduly repeats and emphasizes the prosecution's theory of the case. He also argues that there are "nuances" to the requirements for "aiding and abetting" the various offenses charged in this case.

I approve of giving a "global" "aiding and abetting" elements instruction, but separate "personal commission" elements instructions for each offense, because of the number of substantive charges for which "aiding and abetting" alternatives would be repetitive. Contrary to the prosecution's approach, however, I will begin with the elements of the "personal commission" alternatives, then refer the jurors to a *later* "global" instruction on the elements of the "aiding and abetting" alternatives. Thus, this identification of the two alternative theories does *not* include elements of either theory for any offense. I am not convinced by Jamal Dean's argument that instructing on an "aiding and abetting" alternative for each kind of offense is required or that this instruction unduly emphasizes the prosecution's theories. Rather, this instruction provides the jurors with a coherent framework for understanding that two theories are relevant, and a separate "global" instruction on "aiding and abetting" will not unduly emphasize that theory, where reiteration of essentially the same elements and explanations of "aiding and abetting" for each kind of offense might do so. I also think that it is important for jurors to know, from the start, that they must consider *both* theories, whatever their decision on the "personal commission" alternative.

[42] Rather than framing this instruction in terms of what the prosecution contends, as in the Prosecution's Proposed Jury Instruction No. 6, I believe that it is appropriate to frame it in terms of what the Indictment *charges*, then in terms of an instruction that a person *can be found guilty* under either (or both) alternatives. *See* 8th Cir. Criminal Model 5.01 (2014) (first paragraph).

A defendant can be found guilty of each of the remaining offenses charged in the Indictment, if that defendant

(1) "personally committed" the offense; ***or***

(2) "aided and abetted" another or others to commit the offense, ***or***

(3) both[43]

"Personal Commission" Alternative

A defendant can be found guilty of "personally committing" a charged offense, only if that defendant personally did every element constituting that offense.[44]

- The elements of "personally committing" each kind of offense charged in the Indictment are set out in Instructions Nos. 7 through 11.

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[43] Defendant Jamal Dean argues that it is inappropriate to instruct that a defendant can be found guilty of "both" personally committing an offense and aiding and abetting it. He cites no authority barring a conviction of the same offense on both theories, however. The Eighth Circuit Court of Appeals has had opportunities to comment, at least in dicta, on the propriety of allowing jurors to find a defendant guilty of an offense as both a principal and as an aider and abettor, but has not done so. *See United States v. Huerta-Orozco*, 272 F.3d 561, 565 ("On November 2, 2000, the jury returned its verdict against Huerta–Orozco, finding him guilty of possession with the intent to distribute methamphetamine as both a principal and as an aider and abetter."); *United States v. Haynes*, 881 F.2d 586, 588 (8th Cir. 1989) ("Haynes was charged with and convicted of violating the schoolyard statute as both a principal and an aider and abettor in violation of 18 U.S.C. § 2."). Moreover, allowing jurors to render verdicts on both alternatives allows for complete post-trial review of the sufficiency of the evidence supporting any conviction. Finally, even if a defendant is convicted of one offense on both theories, he can only be sentenced for one violation, so he is not prejudiced.

[44] 8th Cir. Criminal Model 5.01 (first paragraph distinguishing between personal commission and aiding and abetting).

- If the prosecution fails to prove, beyond a reasonable doubt, that a particular defendant personally committed every element of a charged offense, then you cannot find that defendant guilty of that offense under the "personal commission" alternative

"Aiding And Abetting" Alternative

A defendant can be found guilty of a charged offense, even if that defendant did not personally do every element constituting that offense, if that person "aided and abetted" the commission of that offense by another person.

- The elements of "aiding and abetting" the commission of an offense by another are set out in Instruction No. 12
- If the prosecution fails to prove, beyond a reasonable doubt, that a particular defendant "aided and abetted" another to commit a charged offense, then you cannot find that defendant guilty of that charged offense under the "aiding and abetting" alternative

Consideration Of Both Alternatives

You must consider the "aiding and abetting" alternative for each defendant for each offense charged, whatever your decision on whether that defendant "personally committed" that offense.

No. 7 — COUNTS 2 AND 3: ROBBERY INTERFERING WITH COMMERCE

Counts 2 and **3** charge the defendants with separate offenses of "robbery interfering with commerce." The "robbery interfering with commerce" offenses charged in the Indictment are the following:

Count	Date	Alleged Victim
2	On or about April 15, 2013	J.R.
3	On or about April 24, 2013	C.B.

The defendants deny that that they committed these offenses.

"Personal Commission" Alternative

For you to find a particular defendant guilty of a charged "robbery interfering with commerce" offense, on the "personal commission" alternative, the prosecution must prove beyond a reasonable doubt *all* of the following elements against that defendant:[45]

***One*, on or about the date alleged in the count in question, the defendant knowingly took or obtained, or attempted to take or obtain,**

[45] The Prosecution's Proposed Jury Instruction No. 8 muddles together "attempt," "personal commission," and "aiding and abetting." Also, a defendant must "aid and abet" *an offense*, not just particular elements of an offense, as the Prosecution's Proposed Jury Instruction No. 8 seems to suggest. The Prosecution's Proposed Jury Instruction No. 8 also does not clearly provide for *separate* consideration of the guilt or innocence of each defendant. As indicated, above, I will leave an explanation of the elements of "aiding and abetting" *an offense* for a subsequent "global" instruction.

methamphetamine, cash, and other property from the alleged drug trafficker identified in the count in question.[46]

The defendant "attempted" to take or obtain property, if[47]

- he intended to take or obtain the property, ***and***
- he voluntarily and intentional carried out some act that was a substantial step toward taking or obtaining the property

A "substantial step"

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[46] *Compare* 8th Cir. Criminal Model 6.18.1951 (Interference With Commerce By Means Of Extortion (18 U.S.C. § 1951) (Hobbs Act)); Prosecution's Proposed Jury Instruction No. 7; Levon Dean's Proposed Jury Instruction No. 2. I believe that the "robbery" portion of the offense actually involves three elements, rather than two, as set out in elements *one* and *two* of 8th Cir. Criminal Model 6.18.1951. *See* 18 U.S.C. § 1951(b)(1) (defining "robbery" as "[1] the unlawful taking or obtaining of personal property from the person or in the presence of another, [2] against his will, [3] by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining").

The Indictment and the parties' Proposed Jury Instructions on this charge are cast in terms of "took or obtained, or attempted to take or obtain." I believe that this is the appropriate place to instruct on "attempt. *See* Jamal Dean's Proposed Jury Instruction on "Attempt."

Also, § 1951(b)(1) uses both "taking or obtaining," suggesting that they have different meanings. The parties have not offered definitions of the two terms. I will include both terms without definition, assuming that the jurors will apply commonsense and usual definitions of those terms.

[47] This instruction on "attempt" is consistent with Jamal Dean's Proposed Jury Instruction on "Attempt" and 8th Cir. Criminal Model 8.01 and n.2.

- must be something more than mere preparation, but may be less than the last act necessary before completion of the criminal act[48]
- need not be incompatible with innocence, but must be necessary to the completion of the criminal act
- must be of such a nature that a reasonable observer, viewing it in context, could conclude beyond a reasonable doubt that it was undertaken as part of a plan to commit the criminal act

***Two*, the defendant knowingly took or obtained, or attempted to take or obtain, methamphetamine, cash, and other property from the alleged drug trafficker identified in the count in question against the alleged drug trafficker's will.**

***Three*, the defendant knowingly took or obtained, or attempted to take or obtain, the cash by means of force, violence, or fear of injury.**

In this element,

- "By means of force" includes by means of actual force or by means of threatened force

[48] I have used "criminal act," rather than "crime," because what was allegedly "attempted" here was the "taking or obtaining" of property of another (itself criminal), but the charged "crime" is "robbery interfering with commerce," not merely "robbery."

- “By means of fear of injury” includes fear of injury, immediate or future, to the alleged drug trafficker’s person or property[49]

***Four*, the robbery interfered with commerce in some way or degree, or the attempted robbery, had it been completed, would have had the natural and probable result of interfering with commerce in some way or degree.**[50]

“Commerce” and “interference with commerce” were defined for you in Instruction No. 4.

If the prosecution *does not* prove all of these elements beyond a reasonable doubt as to a particular defendant as to a particular count of “robbery interfering with commerce,” then you must find that defendant not guilty of “personally committing” that offense.

“Aiding And Abetting” Alternative

Remember that, whatever your decision on whether a defendant “personally committed” a particular count of “robbery interfering with commerce,” you must *also* consider whether that defendant “aided and abetted” that count of “robbery interfering with commerce,” as “aiding and abetting” alternatives are explained in Instruction No. 12.

[49] I have provided definitions of “by means of force” and “by means of . . . fear of injury” drawn from § 1951(b)(1).

[50] Taking my cue from the title of § 1951, I have cast this element in terms of “interfering” with commerce. The “natural and probable result” language pertaining to an “attempted” robbery is drawn, *e.g.*, from Jamal Dean’s Proposed Jury Instruction on “Attempt.”

No. 8 — COUNTS 4 AND 5: CARJACKING

Counts 4 and **5** charge the defendants with separate offenses of "carjacking." The "carjacking" offenses charged in the Indictment are the following:

Count	Date	Alleged Victim	Vehicle(s)
4	On or about April 15, 2013	J.R.	2011 Kia Optima
5	On or about April 24, 2013	C.B.	2000 Chevrolet Impala 1998 Chevrolet Malibu

The defendants deny that that they committed these offenses.

"Personal Commission" Alternative

For you to find a particular defendant guilty of a charged "carjacking" offense, on the "personal commission" alternative, the prosecution must prove beyond a reasonable doubt *all* of the following elements against that defendant:[51]

***One*, on or about the date alleged in the count in question, the defendant took a vehicle alleged in the count in question from the person or presence of the alleged victim.**

[51] *Compare* Prosecution's Proposed Jury Instruction Nos. 9 and 10 (citing 8th Cir. Criminal Model 6.18.2119A). Again, the prosecution's Proposed Jury Instruction muddles together "personal commission" and "aiding and abetting," and does not clearly provide for *separate* consideration of the guilt or innocence of each defendant. As indicated, above, I will leave an explanation of the elements of "aiding and abetting" for a subsequent "global" instruction.

The vehicle or vehicles allegedly taken and the victim from whom they were allegedly taken for each count are set out in the table above. As to **Count 5**,

- the prosecution does not have to prove that both of the vehicles alleged were taken
- it is enough if the prosecution proves that one or both of the vehicles were taken
- you must unanimously agree on which vehicle or vehicles, if any, were taken

For both counts, a vehicle was taken "from the person and presence of the alleged victim," even if the victim was inside a building, and the vehicle taken was parked outside, *if*

- the vehicle was within the victim's reach, inspection, observation, or control, such that he could have retained possession of the vehicle
- the victim knew or reasonably could have wondered if the vehicle was being taken or might be taken, *and*
- the victim could have retained possession of the vehicle if he had not been overcome by violence or prevented by fear[52]

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[52] I have developed this explanation from *United States v. Casteel*, 663 F.3d 1013, 1019-21 (8th Cir. 2011), on which the prosecution in part relies. As to the second bullet, *Casteel* assumes, without deciding, that the victim must know that the vehicle is being stolen, for the "presence" requirement to be satisfied, but holds that the evidence of such knowledge was sufficient where the victim "was aware she was being robbed by two armed men [and], [d]uring the robbery, [the victim's] conversation with [the defendant] made her wonder if [the defendant] planned to take her car. . . ." *Casteel*, 663 F.3d at 1021. I believe that this language addresses defendant Jamal Dean's concerns that the

***Two*, the vehicle or vehicles taken had been transported, shipped, or received in commerce.**[53]

"Commerce" was defined for you in Instruction No. 4.

***Three*, the defendant took the vehicle or vehicles by means of force and violence or by intimidation.**[54]

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prosecution's proposal, "The presence requirement of this crime may be satisfied when the victim of the carjacking is inside a building and the stolen car is parked outside," was incomplete.

I do not find it necessary, either here or in the explanation to element *four*, to give the prosecution's requested instruction that "[n]othing in the statute requires the taking of the motor vehicle to be an ultimate motive of the criminal enterprise. Rather a carjacking can occur even if the car is stolen only as an improvised getaway vehicle during or after the commission of other offenses." The "intent" required for this offense is the "intent" to cause death or bodily injury. *See* 18 U.S.C. § 2119; 8th Cir. Criminal Model 6.18.2119A. Referring to an intent that is not required is superfluous and potentially confusing.

[53] This "jurisdictional" element seems like a bit of a *non sequitur* as the third element of the model. I have placed this "jurisdictional" element second, so that all of the elements pertaining to "violence" and "bodily injury" are stated successively. I find it unnecessary to refer to either "foreign" or "interstate" commerce. In this case, no vehicle could have been transported, shipped, or received in "foreign" commerce unless it was also transported, shipped, or received in "interstate" commerce, and the definition of "commerce" in Instruction No. 4 is a definition of "interstate" commerce.

[54] As in the Prosecution's Proposed Jury Instruction Nos. 9 and 10 and Levon Dean's Proposed Jury Instruction Nos. 4 and 5, the statute requires that the vehicle be taken "from the person or presence of another *by force and violence* or *by intimidation*." 18 U.S.C. § 2119 (emphasis added). In his Proposed Jury Instructions on "robbery interfering with commerce," Levon Dean attempts to define "by force" and "by means of fear of injury." I have used Levon Dean's definition of "force," but I have defined "intimidation," which includes putting another in fear, found in the Committee Comments to 8th Cir. Criminal Model 6.18.2119A.

In this element

- "by means of force and violence" includes by means of actual force and violence or by means of threatened force and violence

- "by means of intimidation" means conduct reasonably calculated to put an ordinary, reasonable person in fear

    - the prosecution does not have to prove that the victim was actually put in fear

***Four*, at or during the time that the defendant took the vehicle or vehicles, he intended to cause death or serious bodily injury.**

The "intent" requirement[55] is satisfied, *if*

- the defendant had the intent to seriously harm or kill the driver,

    - if necessary to take the vehicle, or

    - even if doing so was not necessary to take the vehicle

- the defendant had that intent at the moment that the defendant demanded or took control over the vehicle

On the other hand, the "intent" requirement is not satisfied by

- an empty threat, or

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[55] I have started with the prosecution's explanation of "intent" in its Proposed Jury Instruction No. 9. However, *Holloway v. United States*, 526 U.S. 1, 6-11 (1991), makes clear that both "conditional intent," to kill or injure if necessary to take the vehicle, and "unconditional intent," to kill or injure even if not necessary to take the vehicle, satisfy the intent requirement of § 2119.

- an intimidating bluff

standing on its own.[56]

"Serious bodily injury" means an injury that involves[57]

- a substantial risk of death
- extreme physical pain
- long-term and obvious disfigurement
- long-term loss or impairment of a function of a bodily member or organ, *and/or*
- the long-term loss or impairment of a mental function

In deciding a defendant's intent,

- the lack of actual harm to the victim does not necessarily prove that the defendant did not intend to kill or seriously injure the victim[58]
- use of force that reasonably could have inflicted serious bodily injury, even if it did not do so, is evidence from which you can

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[56] *See Casteel*, 663 F.3d at 1021 (citing *Holloway*, 526 U.S. at 11); *compare* Prosecution's Proposed Jury Instruction No. 9.

[57] This definition is taken from 8th Cir. Criminal Model 6.18.2119A, unnumbered paragraph following element *four*.

[58] *See United States v. Wright*, 246 F.3d 1123, 1128 (8th Cir. 2001) ("Wright's failure to actually harm Nierste is not determinative of his willingness to do so had Nierste further resisted the theft.").

find that the defendant had the required intent to kill or seriously injure the victim[59]

- evidence that the victim suffered injuries that required urgent or significant medical care is evidence from which you can find that the defendant had the required intent to kill or seriously injure the victim[60]

If the prosecution *does not* prove all of these elements beyond a reasonable doubt as to a particular defendant as to a particular count of "carjacking," then you must find that defendant not guilty of "personally committing" that offense.

"Aiding And Abetting" Alternative

Remember that, whatever your decision on whether a defendant "personally committed" a particular count of "carjacking," you must *also* consider whether that defendant "aided and abetted" that count of "carjacking," as "aiding and abetting" alternatives are explained in Instruction No. 12.

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59 *Id*. at 1127 (evidence that the defendant drove a vehicle at the victim with sufficient force to send the victim up onto the hood, even if the victim was not injured, was sufficient to establish intent).

60 The prosecution has requested an instruction stating, "That a victim was left bleeding and requiring medical care may be evidence that the assailants possessed the requisite intent to cause death or serious bodily harm," citing *United States v. Garcia-Alvarez*, 541 F.3d 8, 16 (1st Cir. 2008). This request is based on the following statement in *Garcia-Alvarez*: "As the assailants' violent assault left López bleeding and requiring medical care and even surgery, it is beyond question that the assailants possessed the requisite intent to cause death or serious bodily harm." I do not find it necessary or appropriate to use the specific language requested. Rather, I have given what I believe is the gist of the *rule* for which *Garcia-Alvarez* would stand.

No. 9 — COUNTS 6 AND 7: BRANDISHING A FIREARM IN FURTHERANCE OF A CRIME OF VIOLENCE[61]

Counts 6 and **7** charge the defendants with separate offenses of "brandishing a firearm in furtherance of a crime of violence." The "brandishing a firearm in furtherance of a crime of violence" offenses charged in the Indictment are the following:

Count	Date	Firearm Allegedly Brandished	Violent Crime(s) Allegedly Furthered
6	On or about April 15, 2013	Semiautomatic Mossberg .22 caliber rifle	(1) April 15, 2013, robbery interfering with commerce, as charged in **Count 2** (2) April 15, 2013, carjacking, as charged in **Count 4**

[61] The Supreme Court has now determined that "brandishing" under 18 U.S.C. § 924(c)(1)(A)(ii) is an element of a separate, aggravated offense, as compared to "using or carrying" under § 924(c)(1)(A)(i), so that "brandishing" must be found by a jury. *See Alleyne v. United States*, ___ U.S. ___, 133 S. Ct. 2151 (2013). The reasoning of *Alleyne* applies with equal strength to the "possessed in furtherance" alternative under § 924(c)(1)(A) and the effect of "brandishing" under § 924(c)(1)(A)(ii) as creating a separate, aggravated offense. The parties do not argue otherwise.

The first effect of *Alleyne* here is that it is now appropriate to structure the jury instruction for this offense in terms of a "greater" offense, "brandishing a firearm in furtherance of a crime of violence," and a "lesser-included" offense, "possessing a firearm in furtherance of a crime of violence.

The second effect of *Alleyne* is that either the "greater" or the "lesser-included" offense can be "aided and abetted," so that a reminder to consider an "aiding and abetting" alternative must follow the elements of "personally committing" the "greater" offense and the elements of "personally committing" the "lesser" offense.

7	On or about April 24, 2013	Semiautomatic Mossberg .22 caliber rifle	(1) April 24, 2013, robbery interfering with commerce, as charged in **Count 3** (2) April 24, 2013, carjacking, as charged in **Count 5**

The defendants deny that that they committed these offenses.

Charged Offense

"Personal Commission" Alternative

For you to find a particular defendant guilty of a charged "brandishing a firearm in furtherance of a crime of violence" offense, on the "personal commission" alternative, the prosecution must prove beyond a reasonable doubt *all* of the following elements against that defendant:[62]

***One*, on or about the date alleged in the count in question, the defendant committed one or both of the violent crimes identified in the count in question.**

> You cannot find a defendant guilty of the offense charged in **Count 6**, unless you also find him guilty of one or both of the following offenses:
>
> - the "robbery interfering with commerce" offense charged in **Count 2**
> - the "carjacking" offense charged in **Count 4**
>
> You cannot find a defendant guilty of the offense charged in **Count 7**, unless you also find him guilty of one or both of the following offenses:

[62] *See* 8th Cir. Model 6.18.924C (2014); *compare* Prosecution's Proposed Jury Instruction Nos. 11 and 12; Jamal Dean's Proposed Jury Instruction No. 6; Levon Dean's Proposed Jury Instruction Nos. 6 and 7.

- the "robbery interfering with commerce" offense charged in **Count 3**
- the "carjacking" offense charged in **Count 5**

***Two*, the defendant knowingly possessed a firearm in furtherance of the violent crime or crimes identified in the count in question.**

"In furtherance of"

- should be given its plain meaning—that is, the act of furthering, advancing, or helping forward
- requires that the defendant possessed the firearm with the intent that it advance, assist, or help commit the crime
- does not require that the firearm actually advanced, assisted, or helped commit the crime[63]

Evidence that the defendant possessed the firearm with the intent to advance, assist, or help commit the crime may include the following:

- evidence that the defendant acquired the firearm for the robbery[64]
- evidence that the firearm made it less likely that the victim would resist[65]

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[63] This definition is drawn from 8th Cir. Model 6.18.924C, penultimate unnumbered paragraph.

[64] *See United States v. Jubiel*, 377 Fed. Appx. 925, 934 (11th Cir. 2010) (unpublished op.).

[65] *See United States v. Bowen*, 527 F.3d 1065, 1076 n.8 (10th Cir. 2008).

- evidence that the defendant provided the firearm to another to commit the offense[66]

***Three*, the defendant brandished the firearm in order to intimidate another person.**[67]

The firearm was "brandished," if one or both of the following occurred:

- the defendant displayed all or a part of the firearm during the violent crime, *or*
- the defendant otherwise made the presence of the firearm known to another person

regardless of whether the firearm was directly visible to another person.[68]

In addition, the firearm must have been displayed or its presence otherwise made known in order to intimidate someone.[69]

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[66] *See United States v. Hyle*, 521 F.3d 946, 956 (8th Cir. 2008).

[67] Because *Alleyne* has established that "brandishing" is the distinguishing element of an "aggravated" offense, I have treated "brandishing" as the last element of the "greater" offense, rather than as a mere "finding." Thus, the "lesser-included" offense will be distinguished by the absence of element *three*.

[68] 18 U.S.C. § 924(c)(4) (defining "brandishing" and expressly stating the "display" and "otherwise made known" prongs as alternatives and that that the firearm need not be directly visible to the person to whom it is displayed or its presence is otherwise made known). The prosecution states that "the defendant or another participant" must have displayed or made known the presence of the firearm. However, I believe that including such language, once again, would muddle the "personal commission" and "aiding and abetting" alternatives.

[69] *See Dean v. United States*, 556 U.S. 568, 572-73 (2009) (reading the statute to require "brandishing" for a particular intent or purpose, that is, "in order to intimidate" the person to whom it is displayed or to whom its presence is made known).

If the prosecution *does not* prove all of these elements beyond a reasonable doubt as to a particular defendant as to a particular count of "brandishing a firearm in furtherance of a crime of violence," then you must find that defendant not guilty of "personally committing" that offense.

"Aiding And Abetting" Alternative

Remember that, whatever your decision on whether a defendant "personally committed" a particular count of "brandishing a firearm in furtherance of a crime of violence," you must *also* consider whether that defendant "aided and abetted" that count of "brandishing a firearm in furtherance of a crime of violence" offense, as "aiding and abetting" alternatives are explained in Instruction No. 12.

"Lesser-Included Offense"

If

- your verdict for a particular defendant on the charged "brandishing a firearm in furtherance of a crime of violence" offense is not guilty, *or*
- after all reasonable efforts, you are unable to reach a verdict on that offense as to that defendant

then you should record that decision on the verdict form and go on to consider whether that defendant is guilty of the "lesser-included offense" of "possession of a firearm in furtherance of a crime of violence," as explained here.[70]

[70] *See* 8th Cir. Criminal Model 3.10.

"Personal Commission" Alternative

For you to find a particular defendant guilty of a "lesser-included" offense of "possessing a firearm in furtherance of a crime of violence" offense, on the "personal commission" alternative, the prosecution must prove beyond a reasonable doubt *both* of the following elements against that defendant:[71]

***One*, on or about the date alleged in the count in question, the defendant committed one or both of the violent crimes identified in the count in question.**

> The explanation of element *one* of the charged offense also applies here.

***Two*, the defendant knowingly possessed a firearm in furtherance of the violent crime or crimes identified in the count in question.**

> The explanation of element *two* of the charged offense also applies here.

If the prosecution *does not* prove both of these elements beyond a reasonable doubt as to a particular defendant as to a particular "lesser-included" offense of "possessing a firearm in furtherance of a crime of violence," then you must find that defendant not guilty of "aiding and abetting" that "lesser-included" offense.

"Aiding And Abetting" Alternative

Remember that, whatever your decision on whether a defendant "personally committed" a particular "lesser-included" offense of "possessing a firearm in furtherance of a crime of violence," you must *also* consider whether that defendant "aided and abetted" that "lesser-included" offense of "possessing a firearm in

[71] *See* 8th Cir. Model 6.18.924C (2014); *compare* Prosecution's Proposed Jury Instruction Nos. 11 and 12; Jamal Dean's Proposed Jury Instruction No. 6; Levon Dean's Proposed Jury Instruction Nos. 6 and 7.

furtherance of a crime of violence," as "aiding and abetting" alternatives are explained in Instruction No. 12.

No. 10 — COUNT 8: PROHIBITED POSSESSION OF A FIREARM AND AMMUNITION

Count 8[72] charges the defendants with "prohibited possession of a firearm and ammunition." The defendants deny that they committed this offense.

"Personal Commission" Alternative[73]

For you to find a particular defendant guilty of "personally committing" this offense, the prosecution must prove beyond a reasonable doubt *all* of the following elements as to that defendant:

***One*, sometime before April 15, 2013, the defendant *either* (a) had been convicted of one or more felony offenses, *or* (b) was an unlawful user of one or more illegal drugs.**[74]

> For you to find that this element has been proved as to **defendant Jamal Dean,** the prosecution must prove one or both of the following:

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[72] Third Superseding Indictment **Count 9**. **Count 8** of the Third Superseding Indictment has been severed for separate trial.

[73] *Compare* 8th Cir. Models 6.18.922A and 6.18.922B; 18 U.S.C. §§ 922(g)(1) (felon) and (g)(3) (drug user or addict). The Third Superseding Indictment, **Count 9**, does not allege that either of the Deans was an "addict," only that they were "users."

[74] *Compare* Prosecution's Proposed Jury Instruction No. 13; Jamal Dean's Proposed Jury Instruction No. 9; Levon Dean's Proposed Jury Instruction No. 9. Again, the Prosecution's proffered instruction, in particular, muddles the separate charges against the separate defendants and the "personal commission" and "aiding and abetting" alternatives.

- he had previously been convicted of a felony offense[75]
    - the prosecution and defendant Jamal Dean have stipulated—that is, they have agreed—that, at some time prior to April 15, 2013, defendant Jamal Dean had been convicted of a felony offense
    - you must consider this alternative to be proved
- he was then an unlawful user of an illegal drug, either or both
    - methamphetamine, and/or
    - marijuana

For you to find that this element has been proved as to **defendant Levon Dean,** the prosecution must prove one or both of the following:

- he had previously been convicted of a felony offense[76]

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[75] It appears from Jamal Dean's Proposed Jury Instruction No. 9 that he stipulates that he had previously been convicted of a felony offense.

[76] It does not appear from Levon Dean's Proposed Jury Instruction No. 9 that he is aware that he has been charged with prohibited possession of a firearm based on his own previous conviction of a felony offense, *as well as* based on his use of unlawful drugs. Rather, he appears to believe that only an "aiding and abetting" alternative concerning "felon in possession" is at issue as to him, based on his allegedly "aiding and abetting" possession of the firearm by Jamal Dean and Sarah Berg, who had prior felony convictions. Because this count of the Third Superseding Indictment and the Prosecution's Proposed Jury Instruction No. 13 clearly assert both "felon in possession" and "drug user" alternatives as to Levon Dean, I assume that the prosecution has not narrowed the scope of this charge against Levon Dean. Notwithstanding that Levon Dean

- the prosecution alleges that Levon Dean had been previously convicted, on March 27, 2007, of a felony offense

- he was then an unlawful user of an illegal drug, either or both
    - methamphetamine, and/or
    - marijuana

A defendant was "an unlawful user of an illegal drug," if

- he used an illegal drug in a manner other than as prescribed by a licensed physician, *and*
- he was actively engaged in use of that illegal drug during the time that he possessed the firearm or ammunition
    - the prosecution does not have to prove that the defendant used the illegal drug at the precise time that he possessed the firearm or ammunition
    - the drug use did not have to be on a particular day or within a matter of days or weeks before the defendant possessed the firearm or ammunition, but did have to be recent enough to

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has not stipulated to a prior felony conviction, I find it unnecessary to define a felony, *unless* Levon disputes that the prior offense alleged is a felony, rather than simply denying that he was convicted of it.

indicate that the defendant was actively engaged in the use of the illegal drug at the time he possessed the firearm or ammunition

- you may infer that the defendant was an unlawful user of an illegal drug from evidence of a pattern of use or possession of an illegal drug that reasonably covers the time that the defendant possessed the firearm or ammunition[77]

***Two*, from sometime before April 15, 2013, and continuing until about April 29, 2013, the defendant knowingly possessed the firearm, ammunition, or both identified in the Indictment**.[78]

"Possession" was defined for you in Instruction No. 4·

The Indictment identifies the firearm and ammunition allegedly involved in this offense as the following:

- a semiautomatic Mossberg .22 caliber rifle

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[77] 8th Cir. Criminal Model 6.18.922B (third unnumbered paragraph after element *three*).

[78] *Compare* Prosecution's Proposed Jury Instruction No. 13 (referring to possession of "any firearm or ammunition identified in the indictment"). The possession must be of *the firearm and/or ammunition alleged*, not *any* firearm or ammunition that might be mentioned in the evidence. Also, the possession of the firearm must be *during the time period* alleged in the indictment.

- ammunition[79]

You must determine whether the defendant knowingly possessed one or more of these items.

- the prosecution does not have to prove that the defendant knowingly possessed both of these items
- a felon or an illegal drug user is prohibited from possess even a single firearm or a single round of ammunition
- you must unanimously agree on which one or more of the charged items, if any, the defendant possessed

The prosecution does not have to prove

- that the defendant knew that he was prohibited from possessing a firearm
- who "owned" the firearm[80]

***Three*, the firearm or ammunition that the defendant illegally possessed had been transported across a state line at some time before the defendant possessed it.**[81]

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[79] *See* Third Superseding Indictment, **Count 9** (alleging possession of both ammunition and a firearm).

[80] "[O]wnership is not relevant to the offense in question." *United States v. Hawkins*, 215 F.3d 858, 860 (8th Cir. 2000) (citing 18 U.S.C. § 922(g)).

[81] It appears from the defendants' proffered jury instructions on this offense that they are willing to stipulate that the firearm and ammunition were both transported across state lines. I have included that stipulation here, assuming that the parties have or will reach such a stipulation.

- the parties have stipulated—that is, they have agreed—that, at some time prior to April 15, 2013, the firearms and ammunition at issue were transported across state lines, if either defendant did, indeed, possess those items
- you must consider this alternative to be proved

If the prosecution *does not* prove all of these elements beyond a reasonable doubt as to a particular defendant as to this "prohibited possession of a firearm and ammunition" offense, then you must find that defendant not guilty of "personally committing" this offense.

"Aiding And Abetting" Alternative

Remember that, whatever your decision on whether a particular defendant "personally committed" this "prohibited possession of a firearm and ammunition" offense, you must *also* consider whether that defendant "aided and abetted" this offense, as "aiding and abetting" alternatives are explained in Instruction No. 12.

No. 11 — COUNTS 9 AND 10: INTERSTATE TRANSPORTATION OF A STOLEN MOTOR VEHICLE

Counts 9[82] and **10**[83] charge the defendants with separate offenses of "interstate transportation of a stolen vehicle." The "interstate transportation of a stolen motor vehicle" offenses charged in the Indictment are the following:

Count	Date	Allegedly Stolen Vehicle Allegedly Transported	Alleged Interstate Transportation
9	On or about April 15, 2013	2011 Kia Optima	From Iowa to Nebraska
10	On or about April 24, 2013	1993 Chevrolet Malibu	From Iowa to Nebraska

The defendants deny that that they committed these offenses.

"Personal Commission" Alternative

For you to find a particular defendant guilty of a charged "interstate transportation of a stolen motor vehicle" offense, on the "personal commission" alternative, the prosecution must prove beyond a reasonable doubt *all* of the following elements against that defendant:[84]

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[82] Third Superseding Indictment **Count 10**.

[83] Third Superseding Indictment **Count 11**.

[84] *See* 8th Cir. Criminal Model 6.18.2312 (2014); Prosecution's Proposed Jury Instruction Nos. 14 and 15; Defendant Jamal Dean's Proposed Jury Instruction No. 10; Defendant Levon Dean's Proposed Jury Instruction Nos. 10 and 11. Again, the prosecution's proffered instructions on these offenses muddle the separate consideration

***One*, the motor vehicle identified in the count in question was stolen.**

> Property has been "stolen" when it has been taken with the intent to permanently or temporarily deprive the owner of the rights and benefits of ownership.[85]

***Two*, after the vehicle was stolen, the defendant moved or caused it be moved across a state line on or about the date alleged in the count in question.[86]**

> The defendant did not have to know that the vehicle was being moved across a state line.[87]

***Three*, at the time that the defendant moved or caused the motor vehicle to be moved across a state line, he knew that the vehicle was stolen.[88]**

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of the charges against the separate defendants and the "personal commission" and "aiding and abetting" alternatives.

[85] 8th Cir. Criminal Model 6.18.2312 (2014) (first unnumbered paragraph after element *three*).

[86] The prosecution and defendant Jamal Dean appear to disagree about whether the vehicle in question must be "stolen" on the date identified in the indictment, or whether it must have been stolen and afterwards moved across a state line on the date identified in the indictment. I conclude it is the latter—that is, that the vehicle must have been stolen prior to the interstate transportation of the vehicle, and that the interstate transportation must have been on or about the date alleged in the indictment. I find it unnecessary to explain, as Jamal Dean requests, that, "[u]nless the vehicle is moved or caused to be moved across a state line, there is no federal crime of interstate transportation of a stolen vehicle." I have made clear that failure of proof on *any* element means that the defendant must be found not guilty. The significance of failure to prove the federal "jurisdictional" element should not be given any special explanation or significance.

[87] 8th Cir. Criminal Model 6.18.2312, Committee Comments.

[88] I do not believe that this element requires any further explanation. The "knowledge" requirement for this element is clearly distinguished from the lack of any "knowledge" requirement concerning crossing state lines by the explanation to element *two*.

If the prosecution *does not* prove all of these elements beyond a reasonable doubt as to a particular defendant as to a particular count of "interstate transportation of a stolen vehicle," then you must find that defendant not guilty of "personally committing" that offense.

"Aiding And Abetting" Alternative

Remember that, whatever your decision on whether a defendant "personally committed" a particular count of "interstate transportation of a stolen vehicle," you must *also* consider whether that defendant "aided and abetted" that count of "interstate transportation of a stolen vehicle," as "aiding and abetting" alternatives are explained in Instruction No. 12.

No. 12 — COUNTS 2 THROUGH 10: AIDING AND ABETTING ALTERNATIVES[89]

In **Counts 2** through **10**, the Indictment charges that, in the alternative to "personally committing" each charged offense, the defendants "aided and abetted" another or others to commit each charged offense.

A defendant can be found guilty of a charged offense, even if that defendant did not personally do every element constituting that offense, if that person "aided and abetted" the commission of that offense by another person.

Elements

For you to find a particular defendant guilty of aiding and abetting a particular charged offense, the prosecution must prove beyond a reasonable doubt *all* of the following elements against that defendant as to that charged offense:

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[89] I believe that it is appropriate to give a "global" "aiding and abetting" instruction, for all pertinent offenses, here, after stating the elements of "personally committing" each kind of offense in separate instructions, notwithstanding the parties' proffer of "aiding and abetting" alternatives with the "elements" instructions for each kind of offense. The "aiding and abetting" alternative part of the Prosecution's Proposed Jury Instruction No. 6 comes nearest to the sort of "global" instruction I have in mind. *Compare* 8th Cir. Criminal Model 5.01 (2014); Proposed 8th Cir. Criminal Model 5.01 (July 7, 2014). Furthermore, I believe that this instruction provides sufficient scope for the offense-specific arguments about whether the defendants "aided and abetted" each of the charged offenses. Thus, offense-specific "aiding and abetting" instructions or offense-specific explanations for particular elements of "aiding and abetting" are unnecessary.

***One*, on or about the date alleged in the count in question, some person or persons personally committed the charged offense.**[90]

The prosecution must prove beyond a reasonable doubt

- that some other person or persons personally committed the charged offense, as the elements of "personally committing" that offense are explained in the Instruction for that kind offense, above[91]

The prosecution does not have to

- identify the other person or persons who personally committed the charged offense
- obtain a conviction of the other person or persons of the charged offense[92]

***Two*, before or at the time that the other person or persons personally committed the charged offense, the defendant knew that offense was being committed or was going to be committed.**

To be an aider and abettor, the defendant

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[90] Because "personal commission" of the charged offense by someone is *required*, *see* 8th Cir. Criminal Model 5.01 (first unnumbered paragraph after numbered paragraph 3), I have always treated proof of "personal commission" of the charged offense as an *element* of "aiding and abetting."

[91] *Compare* 8th Cir. Criminal Model 5.01 (first unnumbered paragraph after numbered paragraph 3).

[92] *See* 8th Cir. Criminal Model 5.01, Committee Comments (citing *Ray v. United States*, 588 F.2d 601, 603-04 (8th Cir. 1978)).

- must have known that another or others were committing or going to commit the charged offense[93]

- need not have known that the offense was a crime or illegal[94]

A person who had no knowledge that a crime was being committed or about to be committed, but who happened to act in a way that advanced some offense, cannot be found guilty of "aiding and abetting" that offense.[95]

***Three*, the defendant had enough advance knowledge of the extent and character of the charged offense that he was able to make a choice to walk away from the crime before all of the elements of that crime were completed.**[96]

You may find that the defendant had the required advance knowledge of the commission of the charged offense, if you find

- that the defendant failed to object, or

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[93] *See* 8th Cir. Criminal Model 5.01 (first sentence of second unnumbered paragraph after numbered paragraph 3).

[94] None of the offenses charged requires knowledge of illegality. *See* 8th Cir. Criminal Model 5.01, n.5 (the aider and abettor must have the same mental state as the person personally committing the offense).

[95] 8th Cir. Criminal Model 5.01 (last sentence of second unnumbered paragraph after numbered paragraph 3).

[96] Proposed 8th Cir. Criminal Model 5.01 (new element (2)). I agree with the Committee that this element is required by *Rosemond v. United States*, ___ U.S. ___, 134 S. Ct. 1240 (2014). I do not believe that "the relevant choice to walk away" is any more helpful to jurors than "a choice to walk away."

- that the defendant failed to withdraw from actively participating in the commission of the charged offense

after the defendant observed another participant complete one or more, but less than all, of the elements of the charged offense.[97]

***Four*, the defendant knowingly acted in some way for the purpose of causing, encouraging, or aiding the other person or persons to commit the charged offense.**[98]

There must be knowing participation in an offense to "aid and abet" that offense.[99] However, the prosecution does not have to prove that the defendant participated in each and every element of the charged offense. Rather, the prosecution must prove that the defendant aided and abetted the charged offense by knowingly providing assistance

- by words
- by acts
- by encouragement
- by support

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[97] *See* Proposed 8th Cir. Criminal Model 5.01 (new second unnumbered paragraph after newly numbered paragraph 4).

[98] I believe that it is particularly appropriate and likely to be helpful to the jury to separate the "same knowledge" element of "aiding and abetting" from the "same intent" element, particularly in light of the charges in this case. *Compare* 8th Cir. Criminal Model 5.01 (elements (2) and (3)).

[99] *See* 8th Cir. Criminal Model 5.01, Committee Comments (citing *United States v. Roan Eagle*, 867 F.2d 436, 445 (8th Cir. 1989)).

of one or more elements of the charged offense.[100]

The following, alone, are not enough to show that the defendant aided and abetted an offense:

- evidence that the defendant was merely present at the scene of an event
- evidence that the defendant merely acted in the same way as others
- evidence that the defendant merely associated with others[101]

***Five*, the defendant must have intended that the charged offense would be committed.**

The aider and abettor must have knowingly participated in the charged offense with the same purpose and the same intent for committing the charged offense as the person or persons who "personally committed" the charged offense.[102]

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[100] *See* Prosecution's Proposed Jury Instruction No. 6 (second paragraph of proposed explanation to element *three*, citing *Rosemond v. United States*, ___ U.S. ___, ___, 134 S.Ct. 1240, 1246 (2014)). Although *Rosemond* does state that the prohibition on aiding and abetting in 18 U.S.C. § 2 "comprehends all assistance rendered by . . . presence," as well as the other means I have listed, I believe that including "knowingly providing assistance . . . by support" covers the kind of "presence" described as sufficient in *Rosemond*, without creating any apparent conflict with the "mere presence" language that follows. Courts have recognized that, even after *Rosemond*, "mere presence" does not make one an aider and abettor. *See, e.g., United States v. Goldtooth*, 754 F.3d 763, 769 (9th Cir. 2014); *United States v. Manso-Cepeda*, Criminal No. 14–082 (FAB), ___ F. Supp. 2d ___, ___, 2014 WL 2600222, *2-*4 (D.P.R. June 11, 2014).

[101] *See* 8th Cir. Criminal Model 5.01 (first sentence of second unnumbered paragraph after numbered paragraph 3).

[102] *See* 8th Cir. Criminal Model 5.01, Committee Comments, final paragraph.

If the prosecution fails to prove, beyond a reasonable doubt, that a particular defendant "aided and abetted" another to commit a charged offense, then you cannot find that defendant guilty of that charged offense under the "aiding and abetting" alternative.

Consideration Of Both Alternatives

You must consider the "aiding and abetting" alternative for each defendant for each offense charged, whatever your decision on whether that defendant "personally committed" that offense.

Verdict On Both Alternatives

In the Verdict Form, if you find a particular defendant guilty of a charged offense, you will be asked to indicate whether you find that defendant guilty of

- "Personally committing" that offense, ***or***
- "Aiding and abetting" that offense, ***or***
- both

No. 13 — DEFINITION OF EVIDENCE[103]

Evidence is the following:

- testimony
- exhibits admitted into evidence, but exhibits are not necessarily more important than any other evidence, just because they are shown to you
- stipulations, which are agreements between the parties that certain facts are true; you must treat stipulated facts as having been proved

The following are not evidence:

- testimony that I tell you to disregard
- exhibits that are not admitted into evidence
- statements, arguments, questions, and comments by the lawyers
- objections and rulings on objections
- anything that you see or hear about this case outside the courtroom
-

You may have heard of "direct" or "circumstantial" evidence.

- "Direct" evidence is direct proof of a fact
  - An example is testimony by a witness about what that witness personally saw or heard or did

[103] My "plain language" jury instructions. *See* 8th Cir. Criminal Model 1.03.

- "Circumstantial" evidence is proof of one or more facts from which you could find another fact
    - An example is testimony that a witness personally saw a broken window and a brick on the floor, from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction between their weight
- The weight to be given any evidence, whether it is "direct" or "circumstantial," is for you to decide. [104]

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

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[104] *See* 8th Cir. Civil Model 1.03 (2014) (modified) and 9th Cir. Criminal Model 1.9 (modified); *but see* 8th Cir. Criminal Model 1.04 (suggesting that definitions of direct and circumstantial evidence are ordinarily not required).

No. 14 — EVIDENCE OF RESISTING ARREST AND FLIGHT[105]

You may hear evidence that defendant Jamal Dean allegedly resisted arrest and fled when a police officer stopped the vehicle in which Jamal Dean was a passenger on April 27, 2013.[106] You may, but are not required to, consider such evidence as evidence of guilt of the offenses charged in **Counts 1**, **2**, **3**, **4**, **5**, **6**, and **7**, if the prosecution proves beyond a reasonable doubt all of the following:

***One*, on April 27, 2013, Jamal Dean (a) resisted arrest, or (b) fled, or (c) both, when a police officer stopped the vehicle in which Jamal Dean was a passenger.**

***Two*, Jamal Dean's resistance to arrest and/or flight occurred when he knew or thought that he was being stopped for committing the charged offenses.**[107]

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[105] *See* Prosecution's Proposed Jury Instruction No. 17; Defendant Jamal Dean's Objections to [Prosecution's] Proposed Jury Instructions And Supplemental Proposed Jury Instructions (docket no. 237). Jamal Dean objects to the prosecution's proffered instruction on the ground that it is admittedly a modification of a model instruction concerning "immediate flight or concealment." As I understand the evidence, however, the April 27, 2013, incident involved not only shooting at the police officer, but then fleeing the scene. The Eighth Circuit Court of Appeals has recognized that both flight and resistance to arrest are evidence suggesting a consciousness of guilt and, thus, guilt itself. *See, e.g., United States v. Thompson*, 690 F.3d 977, 991 (8th Cir. 2012).

[106] I agree with defendant Jamal Dean that reference to "shooting at an officer" is unduly prejudicial. I have addressed more specifically the permissible scope of the evidence of the April 27, 2013, incident in a ruling on the parties' evidentiary motions.

[107] This element concerns circumstances from which it is reasonable to infer that the defendant's resistance to arrest or flight were *because of* his consciousness of guilt.

***Three*, the reason for Jamal Dean's resistance to arrest and/or flight was his consciousness of guilt of the charged offense.**

> Resistance to arrest or flight may not be a reliable indication of guilt.[108] There may be reasons consistent with innocence of a charged offense for a person who has not committed a crime to resist arrest or flee.[109]

You must consider the evidence that defendant Jamal Dean resisted arrest or fled along with all of the other evidence in the case to determine whether the evidence of resisting arrest or flight shows guilt of a charged offense. It is entirely for you to decide

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I agree with defendant Jamal Dean that the Eighth Circuit Court of Appeals has indicated that resistance to arrest or flight gives rise to an inference of guilty if the fact of flight or resistance to arrest arises "'immediately after the commission of a crime, *or* after he is accused of a crime that has been committed.'" *United States v. White*, 488 F.2d 660, 662 (8th Cir. 1973) (emphasis in the original) (quoting with specific approval the italicized language from the instruction given by the district court). The court has also explained, however, that the inference may arise from a defendant's knowledge or belief that he might be sought for the crime. *See United States v. El-Alamin*, 574 F.3d 915, 927 (8th Cir. 2009) (noting, *inter alia*, that the defendant suddenly began to run when he saw a search team); *United States v. Thompson*, 690 F.3d 977, 991 (8th Cir. 2012) (approving the district court's determination that the circumstances demonstrating the defendants' knowledge or belief that he might be sought for a crime gave rise to an inference of guilt from his flight). I have cast this element in terms of knowledge or belief that the defendant was being sought for the charged crimes as the circumstance relevant here. *See* 1A Fed. Jury Prac. & Instr. § 14:08 (6th ed.), Jamal Dean's Proposed Jury Instruction on "resisting arrest," *White*, 488 F.2d at 662, and *Thompson*, 690 F.3d at 991.

[108] *White*, 488 F.2d at 662; 1A Fed. Jury Prac. & Instr. § 14:08 (6th ed.) (stating circumstances in which the conduct in question may or may not indicate guilt).

[109] *See United States v. Webster*, 442 F.3d 1065, 1067 (8th Cir. 2006) (instruction approved by the appellate court).

- whether evidence of resisting arrest or flight reasonably suggests guilt
- the significance of any evidence of resisting arrest or flight[110]

You cannot consider any evidence that defendant Jamal Dean resisted arrest or fled as evidence of the guilt of defendant Levon Dean or anyone else on any charged offense.

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[110] *Webster*, 442 F.3d at 667.

No. 15 — TESTIMONY OF WITNESSES[111]

You may believe all of what any witness says, only part of it, or none of it. In evaluating a witness's testimony, consider the following:

- the witness's
  - intelligence
  - memory
  - opportunity to have seen and heard what happened
  - motives for testifying
  - interest in the outcome of the case
  - manner while testifying
  - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

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[111] My "stock" jury instructions. *See* 8th Cir. Criminal Models 1.05 and 3.04.

You should not give any more or less weight to a witness's testimony just because the witness is one of the following:

- a public official or law enforcement officer
- an expert

You may give any witness's opinion whatever weight you think it deserves, but you should consider the following:

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

If a defendant testifies,

- you should judge his testimony in the same way that you judge the testimony of any other witness

You may hear evidence that a witness has been convicted of a crime. You may use that evidence only to help you decide

- whether or not to believe that witness, and
- how much weight to give that witness's testimony

You must consider the testimony of the following witnesses with greater caution and care:

- A witness testifying about participation in a charged crime
- A witness testifying pursuant to a plea agreement
  - Whether or not the witness's testimony has been influenced by the plea agreement is for you to decide
  - The plea agreement may be a "cooperation" plea agreement that provides that the prosecution may recommend a less severe sentence if the prosecutor believes that the witness has provided "substantial assistance"
  - A judge cannot reduce a sentence for "substantial assistance" unless the prosecution asks the judge to do so, but if the prosecution does ask, the judge decides if and how much to reduce the witness's sentence

It is for you to decide

- what weight you think the testimony of such a witness deserves
- whether or not such a witness's testimony has been influenced by that witness's desire to please the prosecutor or to strike a good bargain is for you to decide.[112]

Remember, it is your exclusive right to give any witness's testimony whatever weight you think it deserves.

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[112] The prosecution indicated that the "greater caution and care" instruction is applicable in this case to both participants and witnesses testifying pursuant to a plea agreement. Prosecution's Proposed Jury Instruction No. 19.

No. 16 — OBJECTIONS[113]

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

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[113] My "stock" jury instructions. *See* 8th Cir. Criminal Model 1.03 (2014) (numbered ¶ 2).

No. 17 — BENCH CONFERENCES[114]

During the trial it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient
- We will do our best to keep such conferences short and infrequent

[114] My "stock" jury instructions. *See* 8th Cir. Criminal Model 1.07 (2014).

No. 18 — NOTE-TAKING[115]

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them
-

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

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[115] My "stock" jury instructions. *See* 8th Cir. Criminal Model 1.06A (2014).

No. 19 — CONDUCT OF JURORS DURING TRIAL[116]

You must decide this case ***solely*** on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.

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[116] My "stock" jury instructions. *See* 8th Cir. Criminal Model 1.08.

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any "blog," about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you

will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.

- Do not decide the case based on "implicit biases." As we discussed during jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes—that is, "implicit biases"—that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases. [117]

- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who

[117] My "stock" instruction on "implicit bias."

will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining two Instructions at the end of the evidence.

No. 20 — DUTY TO DELIBERATE[118]

A verdict must represent the careful and impartial judgment of each of you. However, before you make that judgment, you must consult with one another and try to reach agreement, if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty of a particular charge, say so
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty of a particular charge, say so
- Don't give up your honest beliefs just because others think differently or because you simply want to be finished with the case
- On the other hand, do not hesitate to re-examine your own views and to change your opinions, if you are convinced that they are wrong
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict

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[118] My "stock" jury instructions. *See* 8th Cir. Criminal Model 3.12 (2014).

based solely on the evidence, reason, your common sense, and these instructions

- You must consider all of the evidence bearing on each question before you
- Take all the time that you feel is necessary
- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case

No. 21 — DUTY DURING DELIBERATIONS[119]

You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty of one or more of the charges, I will decide what her sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard

[119] My "stock" jury instructions. *See* 8th Cir. Criminal Model 3.12.

to his race, color, religious beliefs, national origin, or sex. To emphasize the importance of this requirement, the verdict form contains a certification statement. Each of you should carefully read that statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects how you reached your verdict.

- Complete the Verdict Form. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

DATED this 25th day of August, 2014.

Mark W. Bennett

MARK W. BENNETT
U.S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. JAMAL DEAN and LEVON DEAN, Defendants.	No. CR 12-4082-MWB **COURT'S PROPOSED VERDICT FORM** (08/18/14 "ANNOTATED" VERSION)

I. DEFENDANT JAMAL DEAN

As to defendant Jamal Dean, we, the Jury, find as follows:

COUNT 1: CONSPIRACY TO COMMIT ROBBERIES INTERFERING WITH COMMERCE		
Step 1: Verdict	On the offense of "conspiracy to commit robberies interfering with commerce," as charged in **Count 1** of the Indictment, and explained in Instruction No. 5, please indicate your verdict. (*If you find defendant Jamal Dean "not guilty" of this offense, do not answer the questions in **Steps 2** and **3**. Instead, go on to consider your verdict on **Count 2**. If you find this defendant "guilty" of this offense, go on to consider the additional questions concerning **Count 1** in **Steps 2** and **3**.*)	
	___ Not Guilty	___ Guilty
Step 2: Crime(s) That The Conspirators Agreed To Commit	*If you found defendant Jamal Dean "guilty" in **Step 1**,* please indicate which one or more of the following crimes the conspirators agreed to commit. (*After answering this question, please go on to consider the question in **Step 3**.*)	
	___ a robbery of "J.R."	
	___ a robbery of "C.B."	
	___ a robbery of one or more other drug traffickers	

Step 3: “Overt Act(s)”	*If you found defendant Jamal Dean “guilty” in **Step 1**,* please indicate which one or more “overt acts” you unanimously agree were committed by one or more co-conspirators. (*When you have answered the questions in this **step**, please go on to consider your verdict as to Jamal Dean on **Count 2**.*)
	___ Sometime before April 15, 2013, Jamal Dean and Levon Dean acquired a semiautomatic Mossberg .22 caliber rifle and ammunition
	___ Sometime before April 15, 2013, Jamal Dean, Levon Dean, and others discussed robbing individual drug traffickers
	___ Sometime before April 15, 2013, Jamal Dean, Levon Dean, and others began identifying individual drug traffickers that could be robbed
	___ On or about April 15, 2013, Jamal Dean, Levon Dean, and others traveled from a house within South Sioux City, Nebraska, with the semiautomatic Mossberg .22 caliber rifle, to J.R.’s motel room at the Palmer House Motel in Sioux City, Iowa
	___ On or about April 15, 2013, Jamal Dean, Levon Dean, and others entered J.R.’s Palmer House Motel room in Sioux City, Iowa, with the semiautomatic Mossberg .22 caliber rifle
	___ On or about April 15, 2013, Jamal Dean, Levon Dean, and others demanded drugs and cash from J.R.
	___ On or about April 15, 2013, Jamal Dean struck J.R. with the semiautomatic Mossberg .22 caliber rifle
	___ On or about April 15, 2013, Jamal Dean threatened to shoot J.R. with the semiautomatic Mossberg .22 caliber rifle if J.R. did not surrender his methamphetamine, cash, mobile phone, motor vehicle, and other property
	___ On or about April 15, 2013, Jamal Dean, Levon Dean, and others took and obtained, and attempted to take and obtain, methamphetamine, cash, a mobile phone, a motor vehicle, and other property from J.R.
	___ On or about April 15, 2013, Jamal Dean, Levon Dean, and others returned to South Sioux City, Nebraska, in J.R.’s motor vehicle, after the robbery of J.R.
	___ On or about April 24, 2013, Jamal Dean, Levon Dean, and others traveled from a residence within South Sioux City, Nebraska, with the semiautomatic Mossberg .22 caliber rifle, to C.B.’s residence in Sioux City, Iowa
	___ On or about April 24, 2013, Jamal Dean, Levon Dean, and others entered C.B.’s residence in Sioux City, Iowa, with the semiautomatic Mossberg .22 caliber rifle
	___ On or about April 24, 2013, Jamal Dean, Levon Dean, and others demanded that C.B. turn out and empty his pockets
	___ On or about April 24, 2013, Levon Dean gestured to Jamal Dean, who was carrying the semiautomatic Mossberg .22 caliber rifle, and indicated to C.B. that they were seriously threatening C.B. and not playing around

	___ On or about April 24, 2013, Jamal Dean struck C.B. with the semiautomatic Mossberg .22 caliber rifle
	___ On or about April 24, 2013, Jamal Dean, Levon Dean, and others took and obtained, and attempted to take and obtain, methamphetamine, cash, and other property from C.B.
	___ On or about April 24, 2013, Jamal Dean, Levon Dean, and others returned to South Sioux City, Nebraska, in C.B.'s motor vehicle, after the robbery of C.B.
COUNT 2: ROBBERY INTERFERING WITH COMMERCE	
Step 1: Verdict	On the offense of "robbery interfering with commerce," on or about April 15, 2013, of "J.R.," as charged in **Count 2** of the Indictment, please indicate your verdict. (*If you find defendant Jamal Dean "not guilty" of this offense, do not answer the question in **Step 2**. Instead, go on to consider your verdict on **Count 3**. If you find this defendant "guilty" of this offense, go on to consider the additional question concerning **Count 2** in **Step 2.***)
	___ Not Guilty ___ Guilty
Step 2: Alternative(s)	*If you found defendant Jamal Dean "guilty" of this offense in **Step 1***, please indicate whether you find him guilty of "personally committing" this offense, as explained in Instruction No. 7; "aiding and abetting" this offense, as explained in Instruction No. 12; or both "personally committing" and "aiding and abetting" this offense.
	___ personally committing this offense
	___ aiding and abetting this offense
	___ both personally committing and aiding and abetting this offense
COUNT 3: ROBBERY INTERFERING WITH COMMERCE	
Step 1: Verdict	On the offense of "robbery interfering with commerce," on or about April 24, 2013, of "C.B.," as charged in **Count 3** of the Indictment, please indicate your verdict. (*If you find defendant Jamal Dean "not guilty" of this offense, do not answer the question in **Step 2**. Instead, go on to consider your verdict on **Count 4**. If you find this defendant "guilty" of this offense, go on to consider the additional question concerning **Count 3** in **Step 2.***)
	___ Not Guilty ___ Guilty
Step 2: Alternative(s)	*If you found defendant Jamal Dean "guilty" of this offense in **Step 1***, please indicate whether you find him guilty of "personally committing" this offense, as explained in Instruction No. 7; "aiding and abetting" this offense, as explained in Instruction No. 12; or both "personally committing" and "aiding and abetting" this offense.

	___ personally committing this offense
	___ aiding and abetting this offense
	___ both personally committing and aiding and abetting this offense

COUNT 4: CARJACKING		
Step 1: Verdict	On the offense of "carjacking," on or about April 15, 2013, alleging the taking of a 2011 Kia Optima from "J.R.," as charged in **Count 4** of the Indictment, please indicate your verdict. (*If you find defendant Jamal Dean "not guilty" of this offense, do not answer the question in* ***Step 2****. Instead, go on to consider your verdict on* ***Count 5****. If you find this defendant "guilty" of this offense, go on to consider the additional question concerning* ***Count 4*** *in* ***Step 2.***)	
	___ Not Guilty	___ Guilty
Step 2: Alternative(s)	*If you found defendant Jamal Dean "guilty" of this offense in* ***Step 1***, please indicate whether you find him guilty of "personally committing" this offense, as explained in Instruction No. 8; "aiding and abetting" this offense, as explained in Instruction No. 12; or both "personally committing" and "aiding and abetting" this offense.	
	___ personally committing the offense	
	___ aiding and abetting the offense	
	___ both personally committing and aiding and abetting the offense	
COUNT 5: CARJACKING		
Step 1: Verdict	On the offense of "carjacking," on or about April 24, 2013, alleging the taking of a 2000 Chevrolet Impala and/or a 1998 Chevrolet Malibu from "C.B.," as charged in **Count 5** of the Indictment, please indicate your verdict. (*If you find defendant Jamal Dean "not guilty" of this offense, do not answer the questions in* ***Step 2****. Instead, go on to consider your verdict on* ***Count 6****. If you find this defendant "guilty" of this offense, go on to consider the additional questions concerning* ***Count 5*** *in* ***Step 2.***)	
	___ Not Guilty	___ Guilty
Step 2: Vehicle(s) Taken and Alternative(s)	*If you answered "yes" in* ***Step 1****,* please indicate (a) which one or more vehicles Jamal Dean took and, for each vehicle taken, (b) whether Jamal Dean personally took the vehicle, aided and abetted another to take the vehicle, or both. (*When you have answered the questions in this* ***step****, please go on to consider your verdict on* ***Count 6****.*)	

(a)	___ 2000 Chevrolet Impala	___ 1998 Chevrolet Malibu
(b)	___ by personally taking the vehicle	___ by personally taking the vehicle
	___ by aiding and abetting another to take the vehicle	___ by aiding and abetting another to take the vehicle
	___ by both personally taking the vehicle and aiding and abetting another to take the vehicle	___ by both personally taking the vehicle and aiding and abetting another to take the vehicle

COUNT 6: BRANDISHING A FIREARM IN FURTHERANCE OF A CRIME OF VIOLENCE			
Step 1: Verdict	On the offense of "brandishing a firearm in furtherance of a crime of violence," on or about April 15, 2013, alleging brandishing a firearm in furtherance of the "robbery interfering with commerce" offense charged in **Count 2** and the "carjacking" offense charged in **Count 4**, please indicate your verdict. (*If you find defendant Jamal Dean "not guilty" of this offense or if, after all reasonable efforts to reach a verdict, you enter "no verdict" in this* ***step****, do not answer the questions in* ***Steps 2*** *and* ***3****. Instead, skip to* ***Step 4****. If you find defendant Jamal Dean "guilty" of this offense, answer only the questions in* ***Step 2*** *and* ***3****, then go on to consider your verdict on* ***Count 7****.*)		
	___ Guilty	___ Not guilty	___ No Verdict
Step 2: Violent Crime(s) Furthered	*If you found defendant Jamal Dean "guilty" in* ***Step 1****,* please indicate whether you find him guilty of brandishing a firearm in furtherance of the "robbery interfering with commerce" offense charged in **Count 2**; the "carjacking" offense charged in **Count 4**, or both. (*When you have answered the question in this* ***step****, please go on to consider the question in* ***Step 3****.*)		
	___ the "robbery interfering with commerce" offense charged in **Count 2**		
	___ the "carjacking" offense charged in **Count 4**		
	___ both		
Step 3: Alternative(s)	*If you found defendant Jamal Dean "guilty" of this offense in* ***Step 1****,* please indicate whether you find him guilty of "personally committing" the offense, as explained in the "Charged Offense" section of Instruction No. 9; "aiding and abetting" the offense, as explained in Instruction No. 12; or both "personally committing" and "aiding and abetting" the offense. (*Do not answer the question in* ***Step 4****. Instead, go on to consider your verdict on* ***Count 7****.*)		

	___ personally committing this offense ___ aiding and abetting this offense ___ both personally committing and aiding and abetting this offense	↓

Step 4: "Lesser-Included Offense"	*If you found defendant Jamal Dean "not guilty" of the charged offense or if, after all reasonable efforts to reach a verdict, you entered "no verdict" in* ***Step 1****,* please **(a)** indicate your verdict on the "lesser-included offense" of "possessing a firearm in furtherance of a crime of violence," as explained in the "Lesser-Included Offense" section of Instruction No. 9, and, if you find him "guilty," **(b)** indicate whether he "personally committed" the "lesser-included offense," "aided and abetted" it, or both. (*When you have answered the question in this* ***step****, please go on to consider your verdict on* ***Count*** *7.*)	
(a)	___ Not Guilty	___ Guilty
(b)		___ personally committing this offense ___ aiding and abetting this offense ___ both personally committing and aiding and abetting this offense

COUNT 7: BRANDISHING A FIREARM IN FURTHERANCE OF A CRIME OF VIOLENCE

Step 1: Verdict	On the offense of "brandishing a firearm in furtherance of a crime of violence," on or about April 24, 2013, alleging brandishing a firearm in furtherance of the "robbery interfering with commerce" offense charged in **Count 3** and the "carjacking" offense charged in **Count 5**, please indicate your verdict. (*If you find defendant Jamal Dean "not guilty" of this offense or if, after all reasonable efforts to reach a verdict, you enter "no verdict" in this* ***step****, do not answer the questions in* ***Steps 2*** *or* ***3****. Instead, skip to* ***Step 4****. If you find defendant Jamal Dean "guilty" of this offense, answer only the questions in* ***Steps 2*** *and* ***3****, then go on to consider your verdict on* ***Count*** *8.*)		
	___ Guilty	___ Not guilty	___ No Verdict
	↓	↓	↓
Step 2: Violent Crime(s) Furthered	*If you found defendant Jamal Dean "guilty" in* ***Step 1****,* please indicate whether you find him guilty of brandishing a firearm in furtherance of the "robbery interfering with commerce" offense charged in **Count 3**; the "carjacking" offense charged in **Count 5**, or both. (*When you have answered the question in this* ***step****, please go on to consider the question in* ***Step 3****.*)		↓

<table>
<tr><td rowspan="3"></td><td>___ the “robbery interfering with commerce” offense charged in Count 3</td><td rowspan="7">↓</td></tr>
<tr><td>___ the “carjacking” offense charged in Count 5</td></tr>
<tr><td>___ both</td></tr>
<tr><td>Step 3:
Alternative(s)</td><td>If you found defendant Jamal Dean “guilty” of this offense in Step 1, please indicate whether you find him guilty of “personally committing” the offense, as explained in the “Charged Offense” section of Instruction No. 9; “aiding and abetting” the offense, as explained in Instruction No. 12; or both “personally committing” and “aiding and abetting” the offense. (Do not answer the question in Step 4. Instead, go on to consider your verdict on Count 8.)</td></tr>
<tr><td rowspan="3"></td><td>___ personally committing this offense</td></tr>
<tr><td>___ aiding and abetting this offense</td></tr>
<tr><td>___ both personally committing and aiding and abetting this offense</td></tr>
</table>

<table>
<tr><td>Step 4:
“Lesser-Included Offense”</td><td colspan="2">If you found defendant Jamal Dean “not guilty” of the charged offense or if, after all reasonable efforts to reach a verdict, you entered “no verdict” in Step 1, please (a) indicate your verdict on the “lesser-included offense” of “possessing a firearm in furtherance of a crime of violence,” as explained in the “Lesser-Included Offense” section of Instruction No. 9, and, if you find him “guilty,” (b) indicate whether he “personally committed” the “lesser-included offense,” “aided and abetted” it, or both. (When you have answered the question in this step, please go on to consider your verdict on Count 8.)</td></tr>
<tr><td>(a)</td><td>___ Not Guilty</td><td>___ Guilty</td></tr>
<tr><td rowspan="3">(b)</td><td></td><td>___ personally committing this offense</td></tr>
<tr><td></td><td>___ aiding and abetting this offense</td></tr>
<tr><td></td><td>___ both personally committing and aiding and abetting this offense</td></tr>
</table>

COUNT 8:[120] PROHIBITED POSSESSION OF A FIREARM AND AMMUNITION		
Step 1: Verdict	On the offense of "prohibited possession of a firearm and ammunition," as charged in **Count 8** of the Indictment, please indicate your verdict. (*If you find defendant Jamal Dean "not guilty" of this offense, do not answer the questions in* ***Steps 2****,* ***3****, and* ***4****. Instead, go on to consider your verdict on* ***Count 9****. If you find this defendant guilty of this offense, go on to consider the additional questions concerning* ***Count 8*** *in* ***Steps 2****,* ***3****, and* ***4****.*)	
	___ Not Guilty	___ Guilty
Step 2: Alternative(s)	*If you found defendant Jamal Dean "guilty" of this offense in* ***Step 1***, please indicate whether you find him guilty of "personally committing" this offense, as explained in Instruction No. 10; "aiding and abetting" this offense, as explained in Instruction No. 12; or both "personally committing" and "aiding and abetting" this offense. (*After answering this question, please go on to* ***Step 3****.)*	
	___ personally committing the offense	
	___ aiding and abetting the offense	
	___ both personally committing and aiding and abetting the offense	
Step 3: Prohibited Status(es)	*If you found defendant Jamal Dean "guilty" of this offense in* ***Step 1***, please indicate whether you find him guilty of prohibited possession based on his prior felony conviction, his illegal drug use (and whether he used methamphetamine, marijuana, or both), or both his prior felony conviction and his use of illegal drugs. (*After answering this question, please go on to* ***Step 4****.)*	
	___ prior conviction of a felony offense	
	___ illegal drug use (involving use of ___ methamphetamine, ___ marijuana, ___ both methamphetamine and marijuana)	
Step 4: Item(s) Possessed	*If you found defendant Jamal Dean "guilty" of this offense in* ***Step 1***, please indicate whether you find him guilty of prohibited possession of a semiautomatic Mossberg .22 caliber rifle, ammunition, or both the rifle and the ammunition. (*After answering this question, please go on to consider your verdict on* ***Count 9****.)*	
	___ a semiautomatic Mossberg .22 caliber rifle	
	___ ammunition	
	___ both the rifle and the ammunition	

[120] Again, this is **Count 9** of the Third Superseding Indictment.

COUNT 9:[121] **INTERSTATE TRANSPORTATION OF A STOLEN VEHICLE**		
Step 1: Verdict	On the offense of "interstate transportation of a stolen vehicle," on or about April 15, 2013, alleging interstate transportation of a stolen 2011 Kia Optima, as charged in **Count 9** of the Indictment, please indicate your verdict. (*If you find defendant Jamal Dean "not guilty" of this offense, do not answer the question in **Step 2**. Instead, go on to consider your verdict on **Count 10**. If you find this defendant guilty of this offense, go on to consider the additional question concerning **Count 4** in **Step 2.***)	
	___ Not Guilty	___ Guilty
Step 2: Alternative(s)	*If you found defendant Jamal Dean "guilty" of this offense in **Step 1***, please indicate whether you find him guilty of "personally committing" this offense, as explained in Instruction No. 11; "aiding and abetting" this offense, as explained in Instruction No. 12; or both "personally committing" and "aiding and abetting" this offense.	
	___ personally committing the offense	
	___ aiding and abetting the offense	
	___ both personally committing and aiding and abetting the offense	
COUNT 10:[122] **INTERSTATE TRANSPORTATION OF A STOLEN VEHICLE**		
Step 1: Verdict	On the offense of "interstate transportation of a stolen vehicle," on or about April 24, 2013, alleging the interstate transportation of a stolen 1998 Chevrolet Malibu, as charged in **Count 10** of the Indictment, please indicate your verdict. (*If you find defendant Jamal Dean "not guilty" of this offense, do not answer the question in **Step 2**. Instead, please read the Certification below, sign the Verdict Form and notify the Court Security Officer that you have reached a verdict*.)	
	___ Not Guilty	___ Guilty
Step 2: Alternative(s)	*If you found defendant Jamal Dean "guilty" of this offense in **Step 1***, please indicate whether you find him guilty of "personally committing" this offense, as explained in Instruction No. 11; "aiding and abetting" this offense, as explained in Instruction No. 12; or both "personally committing" and "aiding and abetting" this offense. (*Please read the Certification below, sign the Verdict Form and notify the Court Security Officer that you have reached a verdict*.)	

[121] Again, this is **Count 10** of the Third Superseding Indictment.

[122] Again, this is **Count 11** of the Third Superseding Indictment.

	___ personally committing the offense
	___ aiding and abetting the offense
	___ both personally committing and aiding and abetting the offense

CERTIFICATION
By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the charged offenses regardless of the race, color, religious beliefs, national origin, or sex of the defendant.

____
Date

Foreperson	Juror
Juror	Juror
Juror	Juror
Juror	Juror
Juror	Juror
Juror	Juror

II. DEFENDANT LEVON DEAN

As to defendant Levon Dean, we, the Jury, find as follows:

<table>
<tr><th colspan="3">COUNT 1: CONSPIRACY TO COMMIT ROBBERIES INTERFERING WITH COMMERCE</th></tr>
<tr><td>Step 1:
Verdict</td><td colspan="2">On the offense of “conspiracy to commit robberies interfering with commerce,” as charged in Count 1 of the Indictment, and explained in Instruction No. 5, please indicate your verdict. (If you find defendant Levon Dean “not guilty” of this offense, do not answer the questions in Steps 2 and 3. Instead, go on to consider your verdict on Count 2. If you find this defendant “guilty” of this offense, go on to consider the additional questions concerning Count 1 in Steps 2 and 3.)</td></tr>
<tr><td></td><td>___ Not Guilty</td><td>___ Guilty</td></tr>
<tr><td rowspan="4">Step 2:
Crime(s) The Conspirators Agreed To Commit</td><td colspan="2">If you found defendant Levon Dean “guilty” in Step 1, please indicate which one or more of the following crimes the conspirators agreed to commit. (After answering this question, please go on to consider the question in Step 3.)</td></tr>
<tr><td colspan="2">___ a robbery of “J.R.”</td></tr>
<tr><td colspan="2">___ a robbery of “C.B.”</td></tr>
<tr><td colspan="2">___ a robbery of one or more other drug traffickers</td></tr>
<tr><td>Step 3:
“Overt Act(s)”</td><td colspan="2">If you found defendant Levon Dean “guilty” in Step 1, please indicate which one or more “overt acts” you unanimously agree were committed by one or more co-conspirators. (When you have answered the questions in this step, please go on to consider your verdict as to Jamal Dean on Count 2.)</td></tr>
<tr><td rowspan="5"></td><td colspan="2">___ Sometime before April 15, 2013, Jamal Dean and Levon Dean acquired a semiautomatic Mossberg .22 caliber rifle and ammunition</td></tr>
<tr><td colspan="2">___ Sometime before April 15, 2013, Jamal Dean, Levon Dean, and others discussed robbing individual drug traffickers</td></tr>
<tr><td colspan="2">___ Sometime before April 15, 2013, Jamal Dean, Levon Dean, and others began identifying individual drug traffickers that could be robbed</td></tr>
<tr><td colspan="2">___ On or about April 15, 2013, Jamal Dean, Levon Dean, and others traveled from a house within South Sioux City, Nebraska, with the semiautomatic Mossberg .22 caliber rifle, to J.R.’s motel room at the Palmer House Motel in Sioux City, Iowa</td></tr>
<tr><td colspan="2">___ On or about April 15, 2013, Jamal Dean, Levon Dean, and others entered J.R.’s Palmer House Motel room in Sioux City, Iowa, with the semiautomatic Mossberg .22 caliber rifle</td></tr>
</table>

	___ On or about April 15, 2013, Jamal Dean, Levon Dean, and others demanded drugs and cash from J.R.
	___ On or about April 15, 2013, Jamal Dean struck J.R. with the semiautomatic Mossberg .22 caliber rifle
	___ On or about April 15, 2013, Jamal Dean threatened to shoot J.R. with the semiautomatic Mossberg .22 caliber rifle if J.R. did not surrender his methamphetamine, cash, mobile phone, motor vehicle, and other property
	___ On or about April 15, 2013, Jamal Dean, Levon Dean, and others took and obtained, and attempted to take and obtain, methamphetamine, cash, a mobile phone, a motor vehicle, and other property from J.R.
	___ On or about April 15, 2013, Jamal Dean, Levon Dean, and others returned to South Sioux City, Nebraska, in J.R.'s motor vehicle, after the robbery of J.R.
	___ On or about April 24, 2013, Jamal Dean, Levon Dean, and others traveled from a residence within South Sioux City, Nebraska, with the semiautomatic Mossberg .22 caliber rifle, to C.B.'s residence in Sioux City, Iowa
	___ On or about April 24, 2013, Jamal Dean, Levon Dean, and others entered C.B.'s residence in Sioux City, Iowa, with the semiautomatic Mossberg .22 caliber rifle
	___ On or about April 24, 2013, Jamal Dean, Levon Dean, and others demanded that C.B. turn out and empty his pockets
	___ On or about April 24, 2013, Levon Dean gestured to Jamal Dean, who was carrying the semiautomatic Mossberg .22 caliber rifle, and indicated to C.B. that they were seriously threatening C.B. and not playing around
	___ On or about April 24, 2013, Jamal Dean struck C.B. with the semiautomatic Mossberg .22 caliber rifle
	___ On or about April 24, 2013, Jamal Dean, Levon Dean, and others took and obtained, and attempted to take and obtain, methamphetamine, cash, and other property from C.B.
	___ On or about April 24, 2013, Jamal Dean, Levon Dean, and others returned to South Sioux City, Nebraska, in C.B.'s motor vehicle, after the robbery of C.B.

COUNT 2: ROBBERY INTERFERING WITH COMMERCE

Step 1: Verdict	On the offense of "robbery interfering with commerce," on or about April 15, 2013, of "J.R.," as charged in **Count 2** of the Indictment, please indicate your verdict. (*If you find defendant Levon Dean "not guilty" of this offense, do not answer the question in* ***Step 2****. Instead, go on to consider your verdict on* ***Count 3****. If you find this defendant "guilty" of this offense, go on to consider the additional question concerning* ***Count 2*** *in* ***Step 2.***)	
	___ Not Guilty	___ Guilty

Step 2: Alternative(s)	*If you found defendant Levon Dean "guilty" of this offense in **Step 1***, please indicate whether you find him guilty of "personally committing" this offense, as explained in Instruction No. 7; "aiding and abetting" this offense, as explained in Instruction No. 12; or both "personally committing" and "aiding and abetting" this offense.	
	___ personally committing this offense	
	___ aiding and abetting this offense	
	___ both personally committing and aiding and abetting this offense	
COUNT 3: ROBBERY INTERFERING WITH COMMERCE		
Step 1: Verdict	On the offense of "robbery interfering with commerce," on or about April 24, 2013, of "C.B.," as charged in **Count 3** of the Indictment, please indicate your verdict. (*If you find defendant Levon Dean "not guilty" of this offense, do not answer the question in **Step 2**. Instead, go on to consider your verdict on **Count 4**. If you find this defendant "guilty" of this offense, go on to consider the additional question concerning **Count 3** in **Step 2.***)	
	___ Not Guilty	___ Guilty
Step 2: Alternative(s)	*If you found defendant Levon Dean "guilty" of this offense in **Step 1***, please indicate whether you find him guilty of "personally committing" this offense, as explained in Instruction No. 7; "aiding and abetting" this offense, as explained in Instruction No. 12; or both "personally committing" and "aiding and abetting" this offense.	
	___ personally committing this offense	
	___ aiding and abetting this offense	
	___ both personally committing and aiding and abetting this offense	
COUNT 4: CARJACKING		
Step 1: Verdict	On the offense of "carjacking," on or about April 15, 2013, alleging the taking of a 2011 Kia Optima from "J.R.," as charged in **Count 4** of the Indictment, please indicate your verdict. (*If you find defendant Levon Dean "not guilty" of this offense, do not answer the question in **Step 2**. Instead, go on to consider your verdict on **Count 5**. If you find this defendant "guilty" of this offense, go on to consider the additional question concerning **Count 4** in **Step 2.***)	
	___ Not Guilty	___ Guilty

Step 2: Alternative(s)	*If you found defendant Levon Dean "guilty" of this offense in **Step 1***, please indicate whether you find him guilty of "personally committing" this offense, as explained in Instruction No. 8; "aiding and abetting" this offense, as explained in Instruction No. 12; or both "personally committing" and "aiding and abetting" this offense.	
	___ personally committing the offense	
	___ aiding and abetting the offense	
	___ both personally committing and aiding and abetting the offense	
COUNT 5: CARJACKING		
Step 1: Verdict	On the offense of "carjacking," on or about April 24, 2013, alleging the taking of a 2000 Chevrolet Impala and/or a 1998 Chevrolet Malibu from "C.B.," as charged in **Count 5** of the Indictment, please indicate your verdict. (*If you find defendant Levon Dean "not guilty" of this offense, do not answer the questions in **Step 2**. Instead, go on to consider your verdict on **Count 6**. If you find this defendant "guilty" of this offense, go on to consider the additional questions concerning **Count 5** in **Step 2**.*)	
	___ Not Guilty	___ Guilty
Step 2: Vehicle(s) Taken and Alternative(s)	*If you answered "yes" in **Step 1**,* please indicate (a) which one or more vehicles Levon Dean took and, for each vehicle taken, (b) whether Levon Dean personally took the vehicle, aided and abetted another to take the vehicle, or both. (*When you have answered the questions in this **step**, please go on to consider your verdict on **Count 6**.*)	
(a)	___ 2000 Chevrolet Impala	___ 1998 Chevrolet Malibu
(b)	___ by personally taking the vehicle	___ by personally taking the vehicle
	___ by aiding and abetting another to take the vehicle	___ by aiding and abetting another to take the vehicle
	___ by both personally taking the vehicle and aiding and abetting another to take the vehicle	___ by both personally taking the vehicle and aiding and abetting another to take the vehicle

COUNT 6: BRANDISHING A FIREARM IN FURTHERANCE OF A CRIME OF VIOLENCE			
Step 1: Verdict	On the offense of "brandishing a firearm in furtherance of a crime of violence," on or about April 15, 2013, alleging brandishing a firearm in furtherance of the "robbery interfering with commerce" offense charged in **Count 2** and the "carjacking" offense charged in **Count 4**, please indicate your verdict. (*If you find defendant Levon Dean "not guilty" of this offense or if, after all reasonable efforts to reach a verdict, you enter "no verdict" in this* ***step****, do not answer the questions in* ***Steps 2*** *and* ***3****. Instead, skip to* ***Step 4****. If you find defendant Levon Dean "guilty" of this offense, answer only the questions in* ***Step 2*** *and* ***3****, then go on to consider your verdict on* ***Count 7****.*)		
	___ Guilty	___ Not guilty	___ No Verdict
Step 2: Violent Crime(s) Furthered	*If you found defendant Levon Dean "guilty" in* ***Step 1****,* please indicate whether you find him guilty of brandishing a firearm in furtherance of the "robbery interfering with commerce" offense charged in **Count 2**; the "carjacking" offense charged in **Count 4**, or both. (*When you have answered the question in this* ***step****, please go on to consider the question in* ***Step 3****.*)		
	___ the "robbery interfering with commerce" offense charged in **Count 2**		
	___ the "carjacking" offense charged in **Count 4**		
	___ both		
Step 3: Alternative(s)	*If you found defendant Levon Dean "guilty" of this offense in* ***Step 1****,* please indicate whether you find him guilty of "personally committing" the offense, as explained in the "Charged Offense" section of Instruction No. 9; "aiding and abetting" the offense, as explained in Instruction No. 12; or both "personally committing" and "aiding and abetting" the offense. (*Do not answer the question in* ***Step 4****. Instead, go on to consider your verdict on* ***Count 7****.*)		
	___ personally committing this offense		
	___ aiding and abetting this offense		
	___ both personally committing and aiding and abetting this offense		

Step 4: "Lesser-Included Offense"	*If you found defendant Levon Dean "not guilty" of the charged offense or if, after all reasonable efforts to reach a verdict, you entered "no verdict" in* ***Step 1****,* please **(a)** indicate your verdict on the "lesser-included offense" of "possessing a firearm in furtherance of a crime of violence," as explained in the "Lesser-Included Offense" section of Instruction No. 9, and, if you find him "guilty," **(b)** indicate whether he "personally committed" the "lesser-included offense," "aided and abetted" it, or both. (*When you have answered the question in this* ***step****, please go on to consider your verdict on* ***Count*** *7*.)	
(a)	___ Not Guilty	___ Guilty
(b)		___ personally committing this offense
		___ aiding and abetting this offense
		___ both personally committing and aiding and abetting this offense

COUNT 7: BRANDISHING A FIREARM IN FURTHERANCE OF A CRIME OF VIOLENCE			
Step 1: Verdict	On the offense of "brandishing a firearm in furtherance of a crime of violence," on or about April 24, 2013, alleging brandishing a firearm in furtherance of the "robbery interfering with commerce" offense charged in **Count 3** and the "carjacking" offense charged in **Count 7**, please indicate your verdict. (*If you find defendant Levon Dean "not guilty" of this offense or if, after all reasonable efforts to reach a verdict, you enter "no verdict" in this* ***step****, do not answer the questions in* ***Steps 2*** *or* ***3****. Instead, skip to* ***Step 4****. If you find defendant Levon Dean "guilty" of this offense, answer only the questions in* ***Steps 2*** *and* ***3****, then go on to consider your verdict on* ***Count*** *8*.)		
	___ Guilty	___ Not guilty	___ No Verdict
Step 2: Violent Crime(s) Furthered	*If you found defendant Levon Dean "guilty" in* ***Step 1****,* please indicate whether you find him guilty of brandishing a firearm in furtherance of the "robbery interfering with commerce" offense charged in **Count 3**; the "carjacking" offense charged in **Count 5**, or both. (*When you have answered the question in this* ***step****, please go on to consider the question in* ***Step*** *3*.)		
	___ the "robbery interfering with commerce" offense charged in **Count 3**		
	___ the "carjacking" offense charged in **Count 5**		
	___ both		

Step 3: Alternative(s)	*If you found defendant Levon Dean "guilty" of this offense in* ***Step 1****,* please indicate whether you find him guilty of "personally committing" the offense, as explained in the "Charged Offense" section of Instruction No. 9; "aiding and abetting" the offense, as explained in Instruction No. 12; or both "personally committing" and "aiding and abetting" the offense. (*Do not answer the question in* ***Step 4****. Instead, go on to consider your verdict on* ***Count 8****.*)	
	___ personally committing this offense	
	___ aiding and abetting this offense	
	___ both personally committing and aiding and abetting this offense	
Step 4: "Lesser-Included Offense"	*If you found defendant Levon Dean "not guilty" of the charged offense or if, after all reasonable efforts to reach a verdict, you entered "no verdict" in* ***Step 1****,* please **(a)** indicate your verdict on the "lesser-included offense" of "possessing a firearm in furtherance of a crime of violence," as explained in the "Lesser-Included Offense" section of Instruction No. 9, and, if you find him "guilty," **(b)** indicate whether he "personally committed" the "lesser-included offense," "aided and abetted" it, or both. (*When you have answered the question in this* ***step****, please go on to consider your verdict on* ***Count 8****.*)	
(a)	___ Not Guilty	___ Guilty
(b)		___ personally committing this offense
		___ aiding and abetting this offense
		___ both personally committing and aiding and abetting this offense
COUNT 8:[123] **PROHIBITED POSSESSION OF A FIREARM AND AMMUNITION**		
Step 1: Verdict	On the offense of "prohibited possession of a firearm and ammunition," as charged in **Count 8** of the Indictment, please indicate your verdict. (*If you find defendant Levon Dean "not guilty" of this offense, do not answer the questions in* ***Steps 2****,* ***3****, and* ***4****. Instead, go on to consider your verdict on* ***Count 9****. If you find this defendant guilty of this offense, go on to consider the additional questions concerning* ***Count 8*** *in* ***Steps 2****,* ***3****, and* ***4****.*)	
	___ Not Guilty	___ Guilty

[123] Again, this is **Count 9** of the Third Superseding Indictment.

Step 2: Alternative(s)	*If you found defendant Levon Dean "guilty" of this offense in* ***Step 1***, please indicate whether you find him guilty of "personally committing" this offense, as explained in Instruction No. 10; "aiding and abetting" this offense, as explained in Instruction No. 12; or both "personally committing" and "aiding and abetting" this offense. (*After answering this question, please go on to* ***Step 3****.)*
	___ personally committing the offense
	___ aiding and abetting the offense
	___ both personally committing and aiding and abetting the offense
Step 3: Prohibited Status(es)	*If you found defendant Levon Dean "guilty" of this offense in* ***Step 1***, please indicate whether you find him guilty of prohibited possession based on his prior felony conviction, his illegal drug use (and whether he used methamphetamine, marijuana, or both), or both his prior felony conviction and his use of illegal drugs. (*After answering this question, please go on to* ***Step 4****.)*
	___ prior conviction of a felony offense
	___ illegal drug use (involving use of ___ methamphetamine, ___ marijuana, ___ both methamphetamine and marijuana)
Step 4: Item(s) Possessed	*If you found defendant Levon Dean "guilty" of this offense in* ***Step 1***, please indicate whether you find him guilty of prohibited possession of a semiautomatic Mossberg .22 caliber rifle, ammunition, or both the rifle and the ammunition. (*After answering this question, please go on to consider your verdict on* ***Count 9****.)*
	___ a semiautomatic Mossberg .22 caliber rifle
	___ ammunition
	___ both the rifle and the ammunition
COUNT 9:[124] INTERSTATE TRANSPORTATION OF A STOLEN VEHICLE	
Step 1: Verdict	On the offense of "interstate transportation of a stolen vehicle," on or about April 15, 2013, alleging interstate transportation of a stolen 2011 Kia Optima, as charged in **Count 9** of the Indictment, please indicate your verdict. (*If you find defendant Levon Dean "not guilty" of this offense, do not answer the question in* ***Step 2****. Instead, go on to consider your verdict on* ***Count 10****. If you find this defendant guilty of this offense, go on to consider the additional question concerning* ***Count 4*** *in* ***Step 2.***)
	___ Not Guilty ___ Guilty

[124] Again, this is **Count 10** of the Third Superseding Indictment.

Step 2: Alternative(s)	*If you found defendant Levon Dean "guilty" of this offense in **Step 1***, please indicate whether you find him guilty of "personally committing" this offense, as explained in Instruction No. 11; "aiding and abetting" this offense, as explained in Instruction No. 12; or both "personally committing" and "aiding and abetting" this offense.
	___ personally committing the offense
	___ aiding and abetting the offense
	___ both personally committing and aiding and abetting the offense
COUNT 10:[125] INTERSTATE TRANSPORTATION OF A STOLEN VEHICLE	
Step 1: Verdict	On the offense of "interstate transportation of a stolen vehicle," on or about April 24, 2013, alleging the interstate transportation of a stolen 1998 Chevrolet Malibu, as charged in **Count 10** of the Indictment, please indicate your verdict. (*If you find defendant Levon Dean "not guilty" of this offense, do not answer the question in **Step 2**. Instead, please read the Certification below, sign the Verdict Form and notify the Court Security Officer that you have reached a verdict*.)
	___ Not Guilty ___ Guilty
Step 2: Alternative(s)	*If you found defendant Levon Dean "guilty" of this offense in **Step 1***, please indicate whether you find him guilty of "personally committing" this offense, as explained in Instruction No. 11; "aiding and abetting" this offense, as explained in Instruction No. 12; or both "personally committing" and "aiding and abetting" this offense. (*Please read the Certification below, sign the Verdict Form and notify the Court Security Officer that you have reached a verdict*.)
	___ personally committing the offense
	___ aiding and abetting the offense
	___ both personally committing and aiding and abetting the offense

CERTIFICATION

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the charged offenses regardless of the race, color, religious beliefs, national origin, or sex of the defendant.

[125] Again, this is **Count 11** of the Third Superseding Indictment.

Date

Foreperson	Juror
Juror	Juror
Juror	Juror
Juror	Juror
Juror	Juror
Juror	Juror